

October 25, 2022

<p style="text-align: right;">Page 1</p> <p>UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK ----- x :2-19-CV-07271 MARIA SUAREZ, : Plaintiff, : -against- : SOUTHERN GLAZER'S WINE AND SPIRITS OF NEW YORK, LLC, : Defendants. : ----- x 200 Broadhollow Road Melville, New York 11747 October 25, 2022 10:20 a.m. VIDEOCONFERENCE EXAMINATION BEFORE TRIAL of SOUTHERN GLAZER'S WINE AND SPIRITS OF NEW YORK, LLC, the Defendant herein, by ELIZABETH TOO HIG, taken by the Plaintiff, pursuant to Order, before a Stenotype Reporter and Notary Public within and for the State of New York.</p>	<p style="text-align: right;">Page 3</p> <p>1 FEDERAL STIPULATIONS 2 3 IT IS HEREBY STIPULATED AND AGREED 4 by and between the attorneys for the 5 respective parties herein, that filing 6 and sealing be and the same are hereby 7 waived. 8 9 IT IS FURTHER STIPULATED AND AGREED 10 that all objections, except as to the form 11 of the question, shall be reserved to the 12 time of the trial. 13 14 IT IS FURTHER STIPULATED AND AGREED 15 that the within deposition may be sworn to 16 and signed before any officer authorized to 17 administer an oath, with the same force and 18 effect as if signed and sworn to before the 19 Court. 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 2</p> <p>1 E. TOO HIG 2 3 APPEARANCES: 4 MOSER LAW FIRM, P.C. 5 Attorneys for Plaintiff 6 5 East Main Street 7 Huntington, New York 11743 8 9 BY: STEVEN J. MOSER, ESQ. 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>CONSTANGY, BROOKS, SMITH, AND PROPHETE, LLP Attorneys for Defendant 101 Sixth Avenue New York, New York 10013 BY: ANJANETTE CABRERA, ESQ.</p>	<p style="text-align: right;">Page 4</p> <p>1 E. TOO HIG 2 ELIZABETH TOO HIG, after first 3 having been duly sworn by David P. Yuni, a 4 Stenotype Reporter and Notary Public in and for 5 the State of New York, was examined and testified 6 as follows: 7 EXAMINATION BY MR. MOSER: 8 Q State your name for the record. 9 A Elizabeth Toohig. 10 Q What is your current address? 11 A 1459 Meadowbrook Road, Merrick, New 12 York 11566. 13 MR. MOSER: Good morning Ms. Toohig. 14 I am Steven Moser, an attorney, and I 15 represent Maria Suarez in a lawsuit against 16 Southern Glazer's Wine and Spirits of New 17 York. I am going to ask you some questions 18 today. If for any reason you don't 19 understand a question of mine please do not 20 answer it. Instead let me know. I will 21 repeat it or rephrase it as many times as 22 necessary so that you understand, is that 23 okay? 24 THE WITNESS: Yes. 25 Q Have you ever testified under oath</p>

1 (Pages 1 to 4)

October 25, 2022

Page 5	Page 7
<p>1 E. TOOHIGH 2 before today? 3 A Yes. 4 Q On how many occasions? 5 A I don't recall. 6 Q Can you approximate? 7 A Probably more than 10. Less than 25. 8 Q Is there any reason why you cannot 9 testify truthfully and accurately today? 10 A No. 11 Q Are you employed? 12 A Yes. 13 Q Who are you employed by? 14 A A company called Sodexo. 15 Q What do you do for them? 16 A I am a senior director of human 17 resource business partner. 18 Q How long have you been working for 19 them? 20 A Three years. 21 Q What date did you start working for 22 Sodexo approximately? 23 A September 3, 2019. 24 Q Who was your employer before September 25 3, 2019?</p>	<p>1 E. TOOHIGH 2 Q What other facilities? 3 A There is the Brooklyn facility, and 4 then there was a Linden facility. 5 Q How many employees worked at the 6 Brooklyn facility as of December -- withdrawn. 7 Approximately how many individuals were employed 8 in 2019 at the Brooklyn facility? 9 A Roughly 25 trucks got dispatched out 10 of there so two per truck. So call it 60. 11 Q How many employees worked at the 12 Linden facility in 2019 approximately? 13 A Roughly 100. 14 Q Is that Linden, New Jersey? 15 A Yes. 16 Q How many people worked at the Syosset 17 facility? 18 A A rough guess is 300. 19 Q For how long were you the director of 20 HR? 21 A In my last title? 22 Q Yes. 23 A It was less than a year at Southern. 24 A year? 25 Q And what was the title that you had</p>
Page 6	Page 8
<p>1 E. TOOHIGH 2 A Southern Glazer's Wine and Spirits. 3 Q And when was the last day that you 4 worked for Southern Glazer's Wine and Spirits? 5 A Actively employed was December 31, 6 2018. I worked as a consultant up through March 7 31, 2019. 8 Q As of December 3, 2018 what was your 9 job title? 10 A Director of Human Resources. 11 Q Was that for a particular geographic 12 area? 13 A Responsible for New York. 14 Q For the entire state of New York? 15 A Actually at that point, no. Just the 16 metro area. 17 Q What did the metro area include? 18 A Long Island, New York City, the 19 boroughs, New Jersey. 20 Q Did that include the warehouse and 21 offices located in Syosset. 22 A Yes. 23 Q Did that include employees at any 24 other facility? 25 A Yes.</p>	<p>1 E. TOOHIGH 2 prior to being the director of Human Resources? 3 A Vice-president. 4 Q Is that VP of Human Resources? 5 A Correct. 6 Q For a particular geographic area? 7 A For the state of New York. 8 Q For how long did you have the title of 9 VP of Human Resources? 10 A About five years. 11 Q Approximately what dates did you hold 12 that title? 13 A Approximately -- I honestly don't 14 recall. 15 Q Okay. So you became the director of 16 HR on or about December 31, 2018, correct? 17 A No. I left the company in December 18 31, 2018. 19 Q I apologize. So you received -- you 20 were the director of HR for about a year? 21 A Yes. 22 Q And that would mean that approximately 23 from December of 2017 to approximately December of 24 2018 is when you were the director of Human 25 Resources?</p>

2 (Pages 5 to 8)

October 25, 2022

Page 9	Page 11
<p>1 E. TOOHI</p> <p>2 A Yes.</p> <p>3 Q What title did you have before being</p> <p>4 the director of -- becoming the vice-president of</p> <p>5 Human Resources?</p> <p>6 A Director of Human Resources.</p> <p>7 Q When you look at the time period that</p> <p>8 you were the VP of Human Resources it ended</p> <p>9 approximately in December of 2017. Did you hold</p> <p>10 that title from approximately December of 2012 to</p> <p>11 approximately December of 2017?</p> <p>12 A Probably. I mean approximately. I</p> <p>13 don't remember when I got promoted.</p> <p>14 Q What were your duties as the</p> <p>15 vice-president of Human Resources?</p> <p>16 A HR execution throughout the state of</p> <p>17 New York.</p> <p>18 Q Can you explain more specifically what</p> <p>19 you mean by HR execution?</p> <p>20 A We were responsible for all of the</p> <p>21 talent planning, talent acquisition, succession</p> <p>22 planning, performance management, labor relations,</p> <p>23 learning and performance.</p> <p>24 Q Were you personally responsible for</p> <p>25 that?</p>	<p>1 E. TOOHI</p> <p>2 she resigned?</p> <p>3 A Maybe in 2016.</p> <p>4 Q Why did she resign?</p> <p>5 A Different job opportunity closer to</p> <p>6 home.</p> <p>7 Q Where was home?</p> <p>8 A In Queens, I believe.</p> <p>9 Q Who was that job opportunity with?</p> <p>10 A I don't recall.</p> <p>11 Q So as the vice-president of HR</p> <p>12 throughout the state of New York were you</p> <p>13 primarily responsible for all of the hiring?</p> <p>14 A Hiring reported up through me.</p> <p>15 Q And how about performance of the</p> <p>16 evaluations of employees?</p> <p>17 A All reported up through me.</p> <p>18 Q How about disciplinary actions?</p> <p>19 A The same.</p> <p>20 Q How about termination or layoffs? Was</p> <p>21 that something that reported up to you as well?</p> <p>22 A Yes.</p> <p>23 Q Who did you report to as director of</p> <p>24 Human Resources?</p> <p>25 A Operationally I reported up through</p>
Page 10	Page 12
<p>1 E. TOOHI</p> <p>2 A Yes.</p> <p>3 Q How many people did you have in your</p> <p>4 department?</p> <p>5 A As the VP? Nine approximately.</p> <p>6 Q Was one of the individuals who</p> <p>7 reported to you Dina Wald Margolis?</p> <p>8 A Yes.</p> <p>9 Q Who were the other individuals who</p> <p>10 reported to you?</p> <p>11 A During which time frame?</p> <p>12 Q Well, without getting into their</p> <p>13 specific titles what were their roles?</p> <p>14 A There was a talent acquisition so a</p> <p>15 recruiter. There was a leave benefits</p> <p>16 administrator. There were generalists. I think</p> <p>17 those were the main titles. And a mature admin.</p> <p>18 Q What title did Dina Wald Margolis</p> <p>19 have when she worked under you?</p> <p>20 A She was a generalist.</p> <p>21 Q For how long was she a generalist?</p> <p>22 A She was employed prior to me, and then</p> <p>23 she resigned -- I don't know exactly when, but she</p> <p>24 was a generalist throughout that time period.</p> <p>25 Q Can you approximate the date on which</p>	<p>1 E. TOOHI</p> <p>2 Larry Goodrich. I forgot the name for a minute.</p> <p>3 And from an HR perspective I reported up to Corey</p> <p>4 Cooper.</p> <p>5 Q When you say you operationally</p> <p>6 reported up to Larry Goodrich what do you mean by</p> <p>7 operationally?</p> <p>8 A For the day-to-day running of the</p> <p>9 organization and the business I supported Larry</p> <p>10 Goodrich and the New York State on what needed to</p> <p>11 get executed against from an HR standpoint</p> <p>12 anything that I was doing from an HR capacity</p> <p>13 would be run through Corey Cooper.</p> <p>14 Q What was Larry Goodrich's title?</p> <p>15 A General manager.</p> <p>16 Q Of a particular area?</p> <p>17 A Of New York.</p> <p>18 Q Door the entire state of New York?</p> <p>19 A Yes.</p> <p>20 Q Did that include the Linden facility?</p> <p>21 A Yes.</p> <p>22 Q Did that include the upstate</p> <p>23 facilities as well?</p> <p>24 A Yes.</p> <p>25 Q So besides Linden, Brooklyn, Syosset,</p>

3 (Pages 9 to 12)

October 25, 2022

Page 13	Page 15
<p>1 E. TOOHI</p> <p>2 and the upstate New York facility, was Larry</p> <p>3 Goodrich the general manager of any other</p> <p>4 locations?</p> <p>5 A No. Upstate is more than one</p> <p>6 location, though.</p> <p>7 Q How many locations were there upstate?</p> <p>8 A I believe there are five or more. I</p> <p>9 don't know what it is currently.</p> <p>10 Q Corey Cooper, what was his title?</p> <p>11 A I believe it was VP of HR.</p> <p>12 Q Where was his office?</p> <p>13 A In Florida.</p> <p>14 Q Where is the main corporate office of</p> <p>15 Southern Wine and Spirits?</p> <p>16 A In Florida.</p> <p>17 Q Do you understand for the purposes of</p> <p>18 today's deposition that when I say Southern I mean</p> <p>19 Southern Glazer's Wine and Spirits of New York and</p> <p>20 Southern Glazer's Wine and Spirits?</p> <p>21 A Yes.</p> <p>22 Q Okay. Were they previously known by</p> <p>23 another name?</p> <p>24 A Southern Wine and Spirits.</p> <p>25 Q Southern Wine and Spirits?</p>	<p>1 E. TOOHI</p> <p>2 Q How many employees in total worked</p> <p>3 for Southern at those locations approximately?</p> <p>4 A Again, approximately it was maybe</p> <p>5 1,500.</p> <p>6 Q Were you responsible for the</p> <p>7 development of employment handbooks for employees</p> <p>8 at Southern Glazer's Wine and Spirits location in</p> <p>9 Syosset?</p> <p>10 A No.</p> <p>11 Q Who was responsible for that?</p> <p>12 A Corporate headquarters.</p> <p>13 Q Did you have knowledge of what was in</p> <p>14 the employee handbooks?</p> <p>15 A Yes.</p> <p>16 Q Were you responsible for implementing</p> <p>17 the policies that were contained in the employee</p> <p>18 handbooks?</p> <p>19 A Yes.</p> <p>20 Q You earlier testified that you gave</p> <p>21 sworn testimony anywhere between 10 and 25 times.</p> <p>22 With regard to what? Can you be more specific?</p> <p>23 A As to when I gave sworn testimony?</p> <p>24 Q Yes.</p> <p>25 A Jury duty service. I have been</p>
Page 14	Page 16
<p>1 E. TOOHI</p> <p>2 A Yes.</p> <p>3 Q When were they known as Southern Wine</p> <p>4 and Spirits?</p> <p>5 A Prior to the merger with Glazer's</p> <p>6 which a rough guess was in 2015? And prior to</p> <p>7 that when they purchased Premiere which was long</p> <p>8 before I started to work for the company.</p> <p>9 Q As the VP of HR did you have any role</p> <p>10 in the development of employment policies and</p> <p>11 procedures?</p> <p>12 A Yes.</p> <p>13 Q What was that role?</p> <p>14 A I was responsible for establishing all</p> <p>15 policies and procedures if they were not created,</p> <p>16 or implementing any policy and procedure that was</p> <p>17 announced out by our corporate headquarters.</p> <p>18 Q These policies and procedures applied</p> <p>19 to all -- withdrawn. Let's go back to the time</p> <p>20 when you were VP of HR. I want to clarify what</p> <p>21 facilities you were responsible for in terms of HR</p> <p>22 at that time.</p> <p>23 A Long Island. So it is Syosset,</p> <p>24 Brooklyn, Linden, and all five or six locations in</p> <p>25 upstate New York.</p>	<p>1 E. TOOHI</p> <p>2 deposed a couple of other times. I am trying to</p> <p>3 think what other times I have been. Like when I</p> <p>4 hold my hand up and been sworn quite a few times.</p> <p>5 Q How many times have you been deposed?</p> <p>6 A I don't know. Maybe ten times.</p> <p>7 Q Were all of those in regard to</p> <p>8 lawsuits?</p> <p>9 A No.</p> <p>10 Q So tell me about the times that you</p> <p>11 were deposed ten times. What did those concern?</p> <p>12 A So there were lawsuits. I was also</p> <p>13 deposed on investigatory matters that were not</p> <p>14 lawsuit related.</p> <p>15 Q Who deposed you on investigatory</p> <p>16 matters?</p> <p>17 A Internal counsel.</p> <p>18 Q On how many different occasions were</p> <p>19 you deposed by internal counsel?</p> <p>20 A Just a handful of times. I have been</p> <p>21 in the industry quite a long time. I may look</p> <p>22 younger than I am actually.</p> <p>23 Q So let's talk about the time period</p> <p>24 that you were employed by Southern. How many</p> <p>25 times were you deposed when you were employed by</p>

4 (Pages 13 to 16)

October 25, 2022

<p style="text-align: right;">Page 17</p> <p>1 E. TOOHIGH</p> <p>2 Southern?</p> <p>3 A Once by you.</p> <p>4 Q Yes. I remember. Besides that?</p> <p>5 A Maybe three or four times.</p> <p>6 Q Do you remember what these depositions</p> <p>7 concerned?</p> <p>8 A It was a long time ago so I don't</p> <p>9 really recall.</p> <p>10 Q Were you deposed with regard to any</p> <p>11 discrimination lawsuit that were brought against</p> <p>12 Southern other than the one that I deposed you on?</p> <p>13 A Can you repeat that?</p> <p>14 A I don't recall honestly. I am trying</p> <p>15 to think of the situations that I was deposed.</p> <p>16 Q When you were the VP of Human</p> <p>17 Resources who was primarily responsible for making</p> <p>18 sure that Southern's discrimination policies --</p> <p>19 withdrawn. When you were the VP of HR for</p> <p>20 Southern who was primarily responsible for making</p> <p>21 sure that Southern's policies against</p> <p>22 discrimination in the workplace were followed?</p> <p>23 A I was.</p> <p>24 Q Do you know on individual by the name</p> <p>25 of Shaneka Jean Charles?</p>	<p style="text-align: right;">Page 19</p> <p>1 E. TOOHIGH</p> <p>2 A That's the employee handbook for</p> <p>3 Southern Wine and Spirits at the time dated July</p> <p>4 30, 2012.</p> <p>5 Q Did this employee handbook apply to</p> <p>6 Maria Suarez?</p> <p>7 A Yes.</p> <p>8 Q Are you familiar with the reasons why</p> <p>9 Maria Suarez no longer works for Southern?</p> <p>10 A Vaguely. I mean, I have memories of</p> <p>11 it.</p> <p>12 Q What is your memory of why Maria</p> <p>13 Suarez no longer works at Southern?</p> <p>14 A There was a request from corporate to</p> <p>15 reduce our operating expenses so we had to take a</p> <p>16 hard look at the business both from a sales,</p> <p>17 commercial, and operations standpoint and come up</p> <p>18 with operational savings.</p> <p>19 Q Who from corporate gave the</p> <p>20 instructions that operating expenses had to be</p> <p>21 reduced?</p> <p>22 A It was above my pay grade so I believe</p> <p>23 it came from the owners of the company.</p> <p>24 Q How did you learn about the plan to</p> <p>25 reduce operating expenses?</p>
<p style="text-align: right;">Page 18</p> <p>1 E. TOOHIGH</p> <p>2 A Yes.</p> <p>3 Q Who is she?</p> <p>4 A A former employee of mine.</p> <p>5 Q What was her title?</p> <p>6 A Generalist.</p> <p>7 Q What were her duties?</p> <p>8 A She was the generalist for the</p> <p>9 Delivery Department so she responded to drivers'</p> <p>10 concerns, management concerns, othersaw the</p> <p>11 disciplinary process.</p> <p>12 (Whereupon a handbook was marked as</p> <p>13 Plaintiff's Exhibit 8 for Identification, as</p> <p>14 of this date).</p> <p>15 Q I am going to show you what has been</p> <p>16 marked as Plaintiff's Exhibit 8 for</p> <p>17 identification. I am going to represent you that</p> <p>18 this was actually produced in another lawsuit, in</p> <p>19 the prior lawsuit that I deposed you on. The</p> <p>20 first page is Bate stamped SWS000102, and the last</p> <p>21 page is Bate stamped SWS000171. Do you see that?</p> <p>22 A Yes.</p> <p>23 Q Do you recognize this documents?</p> <p>24 A Yes.</p> <p>25 Q What is this document?</p>	<p style="text-align: right;">Page 20</p> <p>1 E. TOOHIGH</p> <p>2 A From the general manager.</p> <p>3 Q Was that Kevin Randall?</p> <p>4 A No.</p> <p>5 Q Who was the general manager?</p> <p>6 A I believe it was Martin Crane at the</p> <p>7 time.</p> <p>8 Q Martin Crane was the general manager</p> <p>9 for what geographic area?</p> <p>10 A The state of New York.</p> <p>11 Q So that would include the Linden, New</p> <p>12 Jersey, location, all of Long Island, and all of</p> <p>13 upstate New York?</p> <p>14 A Yes.</p> <p>15 Q Tell me how you learned of the goal of</p> <p>16 reducing operating expenses?</p> <p>17 A To the best of my recollection it was</p> <p>18 at a leadership meeting. Mr. Crane brought all of</p> <p>19 the leaders from each respective area into a room,</p> <p>20 gave us what our target was of reduction of S, G,</p> <p>21 and A. That's a profit and loss statement term.</p> <p>22 It means earning profits. We have to come out of</p> <p>23 there so it is not a revenue reduction. It is</p> <p>24 reduction in operating costs.</p> <p>25 Q Do you remember anything else about</p>

5 (Pages 17 to 20)

October 25, 2022

<p style="text-align: right;">Page 21</p> <p>1 E. TOOHIGH</p> <p>2 that meeting?</p> <p>3 A We had many, many meetings to go over</p> <p>4 where it was -- where we had to make documents</p> <p>5 from, how we were going to come up with the number</p> <p>6 that we needed to get back to.</p> <p>7 Q And what was the number that you had</p> <p>8 to come up with?</p> <p>9 A I don't recall.</p> <p>10 Q Who would know more about the need to</p> <p>11 reduce operating expenses that led to Ms. Suarez'</p> <p>12 separation from the company? You or Kevin</p> <p>13 Randall?</p> <p>14 A I would say it is equal.</p> <p>15 Q Did you have any conversations with</p> <p>16 Mr. Randall about the operating expense reduction?</p> <p>17 A Yes.</p> <p>18 Q On how many occasions?</p> <p>19 A Quite a few.</p> <p>20 Q Can you approximate?</p> <p>21 A No. It was an intense process, lots</p> <p>22 of meetings, lots of conversations. Lots of</p> <p>23 decisions being made. We don't take eliminating</p> <p>24 peoples' roles lightly. It was a lot of</p> <p>25 conversations.</p>	<p style="text-align: right;">Page 23</p> <p>1 E. TOOHIGH</p> <p>2 A I would have had -- we would have had</p> <p>3 the overall spreadsheets as to the numbers and the</p> <p>4 dollars, the positions that were going, the</p> <p>5 reasons, and justifications. We would have put</p> <p>6 together a list of all of the employees being</p> <p>7 recommended along with all of their information</p> <p>8 and demographics to review. All of that would</p> <p>9 have been submitted to legal.</p> <p>10 Q When you say to legal what do you</p> <p>11 mean?</p> <p>12 A We have a Legal Department. We had a</p> <p>13 Legal Department at Southern Glazier's that we</p> <p>14 would have presented the information to, and they</p> <p>15 would have reviewed it for any additional</p> <p>16 concerns.</p> <p>17 Q Can you approximate how many documents</p> <p>18 were generated with regard to this process?</p> <p>19 A I couldn't. I take a lot of notes so</p> <p>20 --</p> <p>21 MR. MOSER: Mark this as Plaintiff's</p> <p>22 Exhibit 9.</p> <p>23 (Whereupon a confidential lease and</p> <p>24 severance agreement was marked as</p> <p>25 Plaintiff's Exhibit 9 for Identification, as</p>
<p style="text-align: right;">Page 22</p> <p>1 E. TOOHIGH</p> <p>2 Q How many people had to be eliminated</p> <p>3 as part of that operating expense reduction?</p> <p>4 A We were not given a people target. We</p> <p>5 were given a number target.</p> <p>6 Q What number target were you given?</p> <p>7 A I don't recall.</p> <p>8 Q Were there any documents generated</p> <p>9 with regard to -- withdrawn. When was this cost</p> <p>10 operating reduction -- withdrawn. When was this</p> <p>11 earning cost reduction plan put into effect?</p> <p>12 A I don't remember a specific time</p> <p>13 frame.</p> <p>14 Q As a result of that earning cost</p> <p>15 reduction were any individuals other than Ms.</p> <p>16 Suarez let go?</p> <p>17 A Yes.</p> <p>18 Q How many others?</p> <p>19 A I don't recall a specific number.</p> <p>20 Q Were any records kept with regard to</p> <p>21 the decision making process on who you decided</p> <p>22 would stay and who would go?</p> <p>23 A Yes.</p> <p>24 Q What records were kept with regard to</p> <p>25 that process?</p>	<p style="text-align: right;">Page 24</p> <p>1 E. TOOHIGH</p> <p>2 of this date).</p> <p>3 MS. CABRERA: Counsel has shown me</p> <p>4 what was marked as Exhibit Number 9, and I</p> <p>5 just note for the record that it does not</p> <p>6 appear to be a document that has been</p> <p>7 exchanged in discovery. It is not bearing</p> <p>8 any Bate stamps from either the plaintiff or</p> <p>9 the defendant. I am looking at it right</p> <p>10 now. I don't recognize it as something that</p> <p>11 has been shared in this case.</p> <p>12 MR. MOSER: Okay. I believe that this</p> <p>13 has been exchanged; however, to the extent</p> <p>14 that it has not been exchanged we will</p> <p>15 provide a copy today.</p> <p>16 MS. CABRERA: I will make the same</p> <p>17 note about Exhibit number 8. While it is</p> <p>18 bearing Bate stamp numbers apparently this</p> <p>19 is a document from a different case, and not</p> <p>20 this case. It has not been exchanged in</p> <p>21 discovery to my knowledge in this case</p> <p>22 either.</p> <p>23 MR. MOSER: Again, we will provide a</p> <p>24 copy today of everything.</p> <p>25 Q Do you recognize what has been marked</p>

6 (Pages 21 to 24)

October 25, 2022

Page 25	Page 27
<p>1 E. TOOHIGH</p> <p>2 as Plaintiff's Exhibit 9 for identification?</p> <p>3 A It appears to be the Sodexo -- sorry,</p> <p>4 wrong company. Southern Glazer's standard</p> <p>5 confidential release and severance agreement.</p> <p>6 Q I will direct you to page 7 of the</p> <p>7 agreement. Do you see a name on that page?</p> <p>8 A Yes.</p> <p>9 Q Is that from Maria Suarez?</p> <p>10 A It appears to have her signature.</p> <p>11 Q Did you prepare this document?</p> <p>12 A I don't recall.</p> <p>13 Q Was it part of your responsibilities</p> <p>14 to prepare confidential release and severance</p> <p>15 agreements?</p> <p>16 A Yes.</p> <p>17 Q Did you provide this document to Maria</p> <p>18 Suarez?</p> <p>19 A I don't recall.</p> <p>20 Q Was it part of your responsibilities</p> <p>21 -- withdrawn. Did you customarily provide these</p> <p>22 documents to employees that were going to be</p> <p>23 released?</p> <p>24 A Yes.</p> <p>25 Q Besides you was there anyone else who</p>	<p>1 E. TOOHIGH</p> <p>2 Q And then there is age?</p> <p>3 A Yes.</p> <p>4 Q And then there is selected yes or no?</p> <p>5 A Yes.</p> <p>6 Q Okay. What does that mean?</p> <p>7 A This means no, they were not selected?</p> <p>8 Q For termination?</p> <p>9 A Correct.</p> <p>10 Q Yes would mean they were selected for</p> <p>11 termination of this cost reduction initiative?</p> <p>12 A Yes.</p> <p>13 Q Do you know how many people are on</p> <p>14 this list?</p> <p>15 A No.</p> <p>16 Q Do you know what geographic area was</p> <p>17 covered by this?</p> <p>18 A No.</p> <p>19 Q Do you know if it was the entire state</p> <p>20 of New York?</p> <p>21 A I don't recall.</p> <p>22 Q Who would know that?</p> <p>23 A The legal team would put it together.</p> <p>24 I don't remember. It was a while ago.</p> <p>25 Q Can you tell from looking at this how</p>
Page 26	Page 28
<p>1 E. TOOHIGH</p> <p>2 customarily provided these confidential release</p> <p>3 and severance agreements to employees who were</p> <p>4 going to be released?</p> <p>5 A Yes.</p> <p>6 Q Who else would have done that?</p> <p>7 A Some of the other generalists would</p> <p>8 also have responsibilities.</p> <p>9 Q You don't know if either you or one of</p> <p>10 the generalists was the one who provided this to</p> <p>11 Maria Suarez?</p> <p>12 A I don't recall.</p> <p>13 Q I am going to show you pages 8 and 9</p> <p>14 of this document, and please review it. I will</p> <p>15 have some questions for you about it.</p> <p>16 Q Did you have any role in preparing</p> <p>17 Exhibit A?</p> <p>18 A No.</p> <p>19 Q Who prepared Exhibit A?</p> <p>20 A A legal team.</p> <p>21 Q This list of titles that we see here,</p> <p>22 it says -- I am referring to page 8. If you look</p> <p>23 at the left-hand side about one-third down there</p> <p>24 is a column that says job title, correct?</p> <p>25 A Yes.</p>	<p>1 E. TOOHIGH</p> <p>2 many people were selected for separation from</p> <p>3 employment?</p> <p>4 A It looks like four. No, five.</p> <p>5 Q Okay. Was Maria Suarez selected as</p> <p>6 one of the individuals to be let go?</p> <p>7 A Based on the job titles I would assume</p> <p>8 yes.</p> <p>9 Q Do you know whether she was one of the</p> <p>10 individuals selected to be let go based upon your</p> <p>11 personal knowledge?</p> <p>12 A Yes.</p> <p>13 Q Okay. Where do you see Maria Suarez</p> <p>14 on this list of titles, ages, and whether they</p> <p>15 were selected?</p> <p>16 A Well, these are really job</p> <p>17 classifications and necessarily actual titles. So</p> <p>18 I don't remember. It was a long time ago.</p> <p>19 Q Do you know what Ms. Suarez' title was</p> <p>20 when she was let go?</p> <p>21 A I believe that it was warehouse -- WMI</p> <p>22 administrator.</p> <p>23 Q Is WMI administrator listed anywhere</p> <p>24 on Exhibit A?</p> <p>25 MS. CABRERA: Objection. She said</p>

7 (Pages 25 to 28)

October 25, 2022

<p style="text-align: right;">Page 29</p> <p>1 E. TOOHIGH</p> <p>2 these are not job titles. She said they are</p> <p>3 classifications so I don't know what you are</p> <p>4 asking her.</p> <p>5 Q Is WMI administrator listed anywhere</p> <p>6 on Exhibit A?</p> <p>7 A No.</p> <p>8 Q So a total of five people were let go</p> <p>9 as part of this cost reduction initiative?</p> <p>10 A In operations.</p> <p>11 Q How many other people were let go?</p> <p>12 MS. CABRERA: Objection. It was asked</p> <p>13 and answered. You can answer it again.</p> <p>14 A I don't recall, but you are only</p> <p>15 looking at operations. There was commercial as</p> <p>16 well.</p> <p>17 Q When we say operations what does that</p> <p>18 involve?</p> <p>19 A Warehouse, distribution, drivers,</p> <p>20 clerical.</p> <p>21 Q And when you say commercial --</p> <p>22 A Yes.</p> <p>23 Q What did commercial entail?</p> <p>24 A Sales, marketing.</p> <p>25 Q Who was responsible -- you don't have</p>	<p style="text-align: right;">Page 31</p> <p>1 E. TOOHIGH</p> <p>2 elimination?</p> <p>3 A Operational leadership.</p> <p>4 Q Who is that?</p> <p>5 A Kevin. I don't remember his last</p> <p>6 name. Roy Kohn. Oh, it was Kevin Randall.</p> <p>7 Q How many individuals were originally</p> <p>8 recommended for elimination?</p> <p>9 A I don't recall.</p> <p>10 Q And describe for me what you did after</p> <p>11 Roy Kohn and Kevin Randall recommended certain</p> <p>12 individuals for elimination?</p> <p>13 A We would review what the job</p> <p>14 descriptions, where the job responsibilities,</p> <p>15 whether or not they were going to be reassigned to</p> <p>16 someone else, or whether they were actually being</p> <p>17 eliminated and no longer necessary. Then I would</p> <p>18 look at all of the demographics of the employees,</p> <p>19 look at the EEO components, and make sure there</p> <p>20 was no disparate treatment.</p> <p>21 Q What would happen if you found that</p> <p>22 there was disparate treatment or some other</p> <p>23 regularity?</p> <p>24 A I would oppose the elimination.</p> <p>25 Q Did you oppose the elimination of any</p>
<p style="text-align: right;">Page 30</p> <p>1 E. TOOHIGH</p> <p>2 any idea how many people were let go in sales and</p> <p>3 marketing?</p> <p>4 A I don't recall.</p> <p>5 Q As a result of letting these five</p> <p>6 people go in operations how much money was saved?</p> <p>7 A I don't recall.</p> <p>8 Q You were involved in the selection of</p> <p>9 the five individuals that were let go?</p> <p>10 A Yes.</p> <p>11 Q Did you have any role in the selection</p> <p>12 of Maria Suarez as one of those five individuals?</p> <p>13 A Can you redefine the question?</p> <p>14 Q Well, do you know how you were</p> <p>15 involved in the selection of the five individuals</p> <p>16 who were let go?</p> <p>17 A I reviewed each individual that was</p> <p>18 being recommended for termination. For</p> <p>19 elimination, not really termination. I reviewed</p> <p>20 them under the business case, under what was the</p> <p>21 rationale. How the work would be directed, if</p> <p>22 there was additional work that was going to be</p> <p>23 done. Making sure that there was no -- external</p> <p>24 factors influencing their decision.</p> <p>25 Q Who recommended these individuals for</p>	<p style="text-align: right;">Page 32</p> <p>1 E. TOOHIGH</p> <p>2 individual?</p> <p>3 A In this particular case?</p> <p>4 Q Yes.</p> <p>5 A Not that I recall.</p> <p>6 Q Is this something that you would have</p> <p>7 remembered doing?</p> <p>8 A I have done it on quite a few</p> <p>9 occasions so I don't know that it would stand out</p> <p>10 in my memory on this particular case.</p> <p>11 Q Okay. But to the best of your</p> <p>12 recollection you did not oppose the elimination of</p> <p>13 any individuals who was recommended for</p> <p>14 elimination as part of this particular cost</p> <p>15 reduction program?</p> <p>16 A To the best of my recollection.</p> <p>17 Q And so do you know how Mr. Randall and</p> <p>18 Mr. Kohn selected Maria Suarez for elimination?</p> <p>19 A Not that I recall.</p> <p>20 Q So when you received the</p> <p>21 recommendations you had the option to either</p> <p>22 challenge the recommendation or to approve it?</p> <p>23 MS. CABRERA: Objection to the form of</p> <p>24 the question.</p> <p>25 Q What options did you have when these</p>

8 (Pages 29 to 32)

October 25, 2022

<p style="text-align: right;">Page 33</p> <p>1 E. TOOHI</p> <p>2 individuals were recommended for elimination?</p> <p>3 A Well, I would review the recommended</p> <p>4 business case, make sure it was a justified case.</p> <p>5 I would review it with the legal team to make sure</p> <p>6 there was no disparate treatment of them. Then I</p> <p>7 would either approve it and go forward with it or</p> <p>8 not approve it which would not result in the</p> <p>9 elimination.</p> <p>10 Q Is this entire process documented?</p> <p>11 A Yes.</p> <p>12 Q How would you document your process of</p> <p>13 approving or not approving?</p> <p>14 A To the best of my recollection there</p> <p>15 was a spreadsheet that would have been filled out</p> <p>16 that would have all of the employee's information,</p> <p>17 the demographics, all extenuating circumstances,</p> <p>18 what the position was currently, what would be</p> <p>19 happening to the position going forward, whether</p> <p>20 it was considered a redundant position no longer</p> <p>21 necessary due to automation, whether or not there</p> <p>22 would be work that would be divided out amongst</p> <p>23 other individuals, and if there was who the other</p> <p>24 individuals would be.</p> <p>25 Q How would Roy Kohn and Kevin Randall</p>	<p style="text-align: right;">Page 35</p> <p>1 E. TOOHI</p> <p>2 Q Would there be E-mails between you and</p> <p>3 members of the Legal Department as well?</p> <p>4 A I would assume so.</p> <p>5 Q When we talk about the Legal</p> <p>6 Departments we are talking about the in-house</p> <p>7 Legal Department of Southern?</p> <p>8 A Yes.</p> <p>9 Q Who did you communicate with?</p> <p>10 A When we talk about the in-house Legal</p> <p>11 Department, who within the in-house Legal</p> <p>12 Department did you communicate with?</p> <p>13 A I don't recall which attorney was on</p> <p>14 this case.</p> <p>15 Q Was Keith Thorell involved at all in</p> <p>16 approving or disapproving Ms. Suarez for</p> <p>17 elimination?</p> <p>18 A That's an external attorney so I don't</p> <p>19 know if he would be involved in this.</p> <p>20 Q Do you know whether he was involved in</p> <p>21 approving or disapproving of Maria Suarez for</p> <p>22 termination?</p> <p>23 A I don't recall.</p> <p>24 Q Who would know that?</p> <p>25 A I would assume Lauren Moody at the</p>
<p style="text-align: right;">Page 34</p> <p>1 E. TOOHI</p> <p>2 have proposed these particular individuals for</p> <p>3 elimination?</p> <p>4 A Can you define that?</p> <p>5 Q How did they give this list of five</p> <p>6 individuals to you?</p> <p>7 A I don't recall.</p> <p>8 Q Who compiled the information</p> <p>9 concerning the employee information, demographics,</p> <p>10 their position, what would be happening to the</p> <p>11 position whether it was redundant, et cetera?</p> <p>12 A I did.</p> <p>13 Q Did you prepare that for each</p> <p>14 individual who was selected for elimination?</p> <p>15 A Yes, to the best of my knowledge.</p> <p>16 Q What did you do with these documents?</p> <p>17 A I would prepare all of the documents,</p> <p>18 and then I would submit them to the legal team for</p> <p>19 review to make sure that I didn't miss anything.</p> <p>20 Q Then what would happen?</p> <p>21 A It would come back and be either</p> <p>22 approved or disapproved or challenged where they</p> <p>23 would want more information which I would have to</p> <p>24 provide to them. We would have a verbose</p> <p>25 conversation about it.</p>	<p style="text-align: right;">Page 36</p> <p>1 E. TOOHI</p> <p>2 legal team, but again, that's an assumption. I</p> <p>3 don't know.</p> <p>4 Q Would someone from Legal have had to</p> <p>5 approve these five individuals for elimination as</p> <p>6 well?</p> <p>7 A Yes.</p> <p>8 Q And who from Legal would have the</p> <p>9 authority to approve these five individuals for</p> <p>10 elimination?</p> <p>11 A I answered I don't recall which legal</p> <p>12 person on the team that I spoke to.</p> <p>13 Q Okay. Would you have to receive</p> <p>14 written approval from Legal to eliminate these</p> <p>15 five individuals?</p> <p>16 A I would assume it was if an E-mail,</p> <p>17 but I don't remember.</p> <p>18 Q Do you know whether Mr. Kohn and Mr.</p> <p>19 Randall documented in any way the way in which</p> <p>20 they selected these five individuals?</p> <p>21 A I don't recall.</p> <p>22 Q If they had documented in any way</p> <p>23 their selection of their five individuals was that</p> <p>24 something that should have been provided to you?</p> <p>25 A Yes.</p>

9 (Pages 33 to 36)

October 25, 2022

<p style="text-align: right;">Page 37</p> <p>1 E. TOOHI</p> <p>2 Q Okay. Is that something that you</p> <p>3 would have reviewed as part of your process?</p> <p>4 A Yes.</p> <p>5 Q Do you know specifically in this case</p> <p>6 whether or not you received any E-mails regarding</p> <p>7 what process they followed in selecting these five</p> <p>8 individuals?</p> <p>9 A I don't recall.</p> <p>10 Q Was their selection of these five</p> <p>11 individuals documented in some way?</p> <p>12 MS. CABRERA: Objection. It was asked</p> <p>13 and answered.</p> <p>14 A She objected so what do I say?</p> <p>15 MS. CABRERA: You can answer it again.</p> <p>16 A I don't recall what was documented.</p> <p>17 Q But at some point you received</p> <p>18 documentation showing that these five individuals</p> <p>19 had been selected?</p> <p>20 A I would have seen documentation.</p> <p>21 Q And then you would have communicated</p> <p>22 -- you would have prepared the spreadsheets,</p> <p>23 correct?</p> <p>24 A Yes.</p> <p>25 Q And you would have sent that</p>	<p style="text-align: right;">Page 39</p> <p>1 E. TOOHI</p> <p>2 individuals?</p> <p>3 A To the best of my memory it had to do</p> <p>4 with the overall impact to the business.</p> <p>5 Q Besides the overall impact to the</p> <p>6 business of the elimination of a particular</p> <p>7 position was there any other factor considered in</p> <p>8 selecting these five individuals for elimination?</p> <p>9 A Not that I can recall.</p> <p>10 Q Is there any document that would</p> <p>11 refresh your recollection?</p> <p>12 A I don't want to sound snarky. Do you</p> <p>13 have any documents that I can review?</p> <p>14 Q Well, when you say not that I recall</p> <p>15 can you think of any reason other than the impact</p> <p>16 to Southern's business why these five individuals</p> <p>17 were selected?</p> <p>18 MS. CABRERA: Objection to the form of</p> <p>19 the question.</p> <p>20 A It was all about the business and cost</p> <p>21 reductions and what positions could be eliminated,</p> <p>22 what positions would cause the least impact to the</p> <p>23 operations of the business if they were no longer</p> <p>24 there. It was all about the operational</p> <p>25 efficiencies so I don't know of any other factors</p>
<p style="text-align: right;">Page 38</p> <p>1 E. TOOHI</p> <p>2 documentation onto Legal?</p> <p>3 A Yes.</p> <p>4 Q And then Legal would have performed</p> <p>5 their own analysis, and they would have</p> <p>6 communicated to you whether or not it was</p> <p>7 approved?</p> <p>8 A Yes.</p> <p>9 Q That would have been documented as</p> <p>10 well?</p> <p>11 A Yes.</p> <p>12 Q Do you know where any of the documents</p> <p>13 are that show why Maria Suarez was selected for</p> <p>14 elimination?</p> <p>15 A No.</p> <p>16 Q What is the record keeping policy --</p> <p>17 withdrawn. What was the record keeping policy at</p> <p>18 Southern with regard to documentation of positions</p> <p>19 that were eliminated?</p> <p>20 A I don't recall.</p> <p>21 Q Were any of these five individuals</p> <p>22 who were selected for elimination selected because</p> <p>23 of their performance?</p> <p>24 A No.</p> <p>25 Q What factors were used to select these</p>	<p style="text-align: right;">Page 40</p> <p>1 E. TOOHI</p> <p>2 that would be considered.</p> <p>3 Q To your understanding it was all about</p> <p>4 operational efficiency?</p> <p>5 A To the best of my knowledge.</p> <p>6 Q It was not about favoritism?</p> <p>7 A No.</p> <p>8 Q It was not about performance?</p> <p>9 A No.</p> <p>10 Q Let me ask that in a better way</p> <p>11 because my question was flawed. So was the</p> <p>12 decision to eliminate these five individuals based</p> <p>13 on favoritism?</p> <p>14 A No.</p> <p>15 Q Was the decision to eliminate these</p> <p>16 five individuals based on performance?</p> <p>17 A No.</p> <p>18 Q Are you familiar with a lawsuit that</p> <p>19 was filed by Tatiana Herdocia and Ena Scott?</p> <p>20 A Yes.</p> <p>21 Q Did Ena Scott or Tatiana Herdocia ever</p> <p>22 file an EEOC charge against Southern?</p> <p>23 A I don't recall if it was an EEOC</p> <p>24 charge.</p> <p>25 MR. MOSER: Mark this as Plaintiff's</p>

10 (Pages 37 to 40)

October 25, 2022

<p style="text-align: right;">Page 41</p> <p>1 E. TOOHIGH</p> <p>2 Exhibit 10.</p> <p>3 (Whereupon a complaint was marked as</p> <p>4 Plaintiff's Exhibit 10 for Identification,</p> <p>5 as of this date).</p> <p>6 Q I am going to show you what was marked</p> <p>7 as Plaintiff's Exhibit 10 for identification. Do</p> <p>8 you recognize this document, this complaint?</p> <p>9 A Yes.</p> <p>10 Q Okay.</p> <p>11 MS. CABRERA: Again, I am going to</p> <p>12 make a note for the record that Exhibit</p> <p>13 number 10 does not bear any Bate stamps</p> <p>14 reflecting that it has been exchanged in</p> <p>15 this case. I can't say that I remember it</p> <p>16 being exchanged. I don't see the relevance,</p> <p>17 and so I am going to reserve my rights with</p> <p>18 regard to this document and all documents</p> <p>19 being used today that are not a part of the</p> <p>20 record in this case.</p> <p>21 I am also going to note for the record</p> <p>22 that discovery in this case has been ongoing</p> <p>23 for two years now so I really don't</p> <p>24 understand why the witness is being shown</p> <p>25 documents that have not been exchanged in</p>	<p style="text-align: right;">Page 43</p> <p>1 E. TOOHIGH</p> <p>2 MS. CABRERA: Objection to the form of</p> <p>3 the question. What did Dina tell you was</p> <p>4 inappropriate? I don't know why you</p> <p>5 withdrew that one? You can answer over my</p> <p>6 objection if you can.</p> <p>7 A I would say Dina told me in person</p> <p>8 that there was a complaint filed and asked for</p> <p>9 guidance as to how to investigate it.</p> <p>10 Q Okay. Do you recall the sum and</p> <p>11 substance of any of those conversations that you</p> <p>12 had with Dina Wald Margolis?</p> <p>13 A I remember the overall conversation</p> <p>14 and the overall complaint.</p> <p>15 Q What was the overall conversation and</p> <p>16 the overall complaint?</p> <p>17 A The concern has been raised that</p> <p>18 Tatiana and Ena were classified for the purposes</p> <p>19 of, I believe, of worker's comp. as clerical and</p> <p>20 Justin -- his last name starts with a letter V. I</p> <p>21 don't remember it. Veigh or something like that.</p> <p>22 Was clarified as warehouse so it was investigated</p> <p>23 to see whether or not there was discrimination</p> <p>24 against Ena and Tatiana were justified.</p> <p>25 Q Did Josienne Sajous have a similar</p>
<p style="text-align: right;">Page 42</p> <p>1 E. TOOHIGH</p> <p>2 discovery.</p> <p>3 Q So what is this document to your</p> <p>4 understanding?</p> <p>5 A This is a notice of filing with the</p> <p>6 United States District Court in the Eastern</p> <p>7 District of New York that they are filing a</p> <p>8 complaint against Southern Wine and Spirits of</p> <p>9 America.</p> <p>10 Q Who did Tatiana Herdocia and Ena Scott</p> <p>11 report to?</p> <p>12 A At what time?</p> <p>13 Q At the time this complaint was filed.</p> <p>14 A I don't know exactly. At one point</p> <p>15 she reported to Maria Suarez. I don't know at the</p> <p>16 time of this document.</p> <p>17 Q At some point did you become aware</p> <p>18 that female employees who reported to Maria Suarez</p> <p>19 were making claims of discrimination?</p> <p>20 A Yes.</p> <p>21 Q How did you become aware of that?</p> <p>22 A Through Dina Wald Margolis.</p> <p>23 Q What did Dina tell you? I will</p> <p>24 withdraw that. How did you become aware of that?</p> <p>25 Did Dina talk to you? Did she E-mail you?</p>	<p style="text-align: right;">Page 44</p> <p>1 E. TOOHIGH</p> <p>2 claim to Ina and Tatiana?</p> <p>3 A I don't remember the name.</p> <p>4 Q Was there another woman in that</p> <p>5 department?</p> <p>6 A (No answer).</p> <p>7 Q Other than Ena Scott and Tatiana</p> <p>8 Herdocia?</p> <p>9 A I don't recall.</p> <p>10 Q Who raised these concerns with Dina</p> <p>11 Wald Margolis?</p> <p>12 A I believe it was Maria.</p> <p>13 Q Maria Suarez?</p> <p>14 A Yes. I don't know for a fact. That's</p> <p>15 just from recall.</p> <p>16 Q Other than Maria Suarez was there any</p> <p>17 other manager that you can recall that claimed</p> <p>18 that individuals in their department may have been</p> <p>19 discriminated against?</p> <p>20 A Can you repeat that?</p> <p>21 Q Did Maria say that the females in her</p> <p>22 department might have been discriminated against?</p> <p>23 A Maria asked what was the difference</p> <p>24 between the classifications, why Tatiana and Ena</p> <p>25 were classified as clerical, and Justin was</p>

11 (Pages 41 to 44)

October 25, 2022

<p style="text-align: right;">Page 45</p> <p>1 E. TOOHIH</p> <p>2 classified as warehouse.</p> <p>3 Q Did Maria suggest that it was because</p> <p>4 of their sex that they were classified</p> <p>5 differently?</p> <p>6 A I don't recall if it was Maria who</p> <p>7 asked that or whether it was Tatiana and Ena who</p> <p>8 asked that.</p> <p>9 Q Was there ever any inquiry as to how</p> <p>10 Tatiana and Ena came to know that they were</p> <p>11 classified differently?</p> <p>12 A To the best of my recollection? It</p> <p>13 was Maria who brought it to their attention,.</p> <p>14 Q So was that something that Maria</p> <p>15 Suarez should have done?</p> <p>16 A Yes.</p> <p>17 Q Okay. So there was nothing</p> <p>18 inappropriate about Maria Suarez bringing to the</p> <p>19 attention of her employees that it appeared as</p> <p>20 though Justin Veigh was classified differently</p> <p>21 than Ena Scott and Tatiana Herdocia?</p> <p>22 A It was a legitimate question to ask.</p> <p>23 Q There was an investigation performed</p> <p>24 into those allegations?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 47</p> <p>1 E. TOOHIH</p> <p>2 warehouse classification?</p> <p>3 A I don't know.</p> <p>4 Q Was it one?</p> <p>5 A I don't know.</p> <p>6 Q Did you ever disqualify any females</p> <p>7 who had applied for the warehouse position?</p> <p>8 A No.</p> <p>9 Q Can you think of any female who was</p> <p>10 hired in to the warehouse classification as you</p> <p>11 sit here today?</p> <p>12 A No.</p> <p>13 Q If the warehouse classification at the</p> <p>14 Syosset facility was 100 percent male would that</p> <p>15 concern you?</p> <p>16 MS. CABRERA: Objection. You can</p> <p>17 answer it.</p> <p>18 A No.</p> <p>19 Q How many warehouse men were employed</p> <p>20 at the Syosset facility?</p> <p>21 A A rough estimate?</p> <p>22 Q Correct.</p> <p>23 A 150?</p> <p>24 Q And how many warehouse employees had</p> <p>25 been hired in the course of the time period that</p>
<p style="text-align: right;">Page 46</p> <p>1 E. TOOHIH</p> <p>2 Q What was the outcome of that</p> <p>3 investigation?</p> <p>4 A The outcome of the investigation was</p> <p>5 that it had been a clerical error that when Justin</p> <p>6 was hired later into the department that he was</p> <p>7 accidentally coded as warehouse versus the</p> <p>8 appropriate title which was clerical, and it was</p> <p>9 verified.</p> <p>10 Q At the time that these complaints</p> <p>11 were made were there two broad classifications of</p> <p>12 workers in the warehouse?</p> <p>13 MS. CABRERA: Objection to the form.</p> <p>14 Q Under the collective bargaining</p> <p>15 agreement?</p> <p>16 MS. CABRERA: Objection to the form</p> <p>17 of the question. You can answer it.</p> <p>18 A I know there are at least two. I</p> <p>19 don't know if there was more when it comes to this</p> <p>20 case.</p> <p>21 Q There is clerical, and then there is</p> <p>22 warehouse employees?</p> <p>23 A Yes.</p> <p>24 Q During the time that you were employed</p> <p>25 at Southern how many females were hired into the</p>	<p style="text-align: right;">Page 48</p> <p>1 E. TOOHIH</p> <p>2 you were responsible for HR at that facility?</p> <p>3 A I won't be able to recall. It is not</p> <p>4 a high turnover position.</p> <p>5 Q Was it at least 50 individuals?</p> <p>6 A I don't know.</p> <p>7 Q Do you know if any individual that was</p> <p>8 selected to be hired for the warehouse position</p> <p>9 was a female?</p> <p>10 A I don't know.</p> <p>11 Q Is diversity important at Southern?</p> <p>12 A Yes.</p> <p>13 Q And that would include gender</p> <p>14 diversity in different roles?</p> <p>15 A Yes.</p> <p>16 Q If the warehouse classification was</p> <p>17 100 percent male is that something that you should</p> <p>18 have known?</p> <p>19 MS. CABRERA: Objection.</p> <p>20 A I don't know.</p> <p>21 Q Are you aware that the women who sued</p> <p>22 Southern Wine and Spirits claimed that the</p> <p>23 warehouse classification was 100 percent male?</p> <p>24 A Yes.</p> <p>25 Q Did you ever do an investigation into</p>

12 (Pages 45 to 48)

October 25, 2022

<p style="text-align: right;">Page 49</p> <p>1 E. TOOHIGH</p> <p>2 those claims?</p> <p>3 A Yes.</p> <p>4 Q What did you find?</p> <p>5 A I would need the reports back to tell</p> <p>6 you, but about the time I believe it was 100</p> <p>7 percent male.</p> <p>8 Q Did that concern you at all?</p> <p>9 A We also looked at all of the</p> <p>10 employment data of everyone who had applied for</p> <p>11 the positions, and we did not see any</p> <p>12 discriminatory practices in the hiring.</p> <p>13 Q You testified under oath before today,</p> <p>14 correct?</p> <p>15 A Yes.</p> <p>16 Q You testified that certain women had</p> <p>17 been disqualified from this particular position,</p> <p>18 correct?</p> <p>19 MS. CABRERA: Objection. That's</p> <p>20 actually not what she said. You can go</p> <p>21 ahead.</p> <p>22 MR. MOSER: I will withdraw the</p> <p>23 question.</p> <p>24 (Whereupon a female applicant sheet</p> <p>25 was marked as Plaintiff's Exhibit 11 for</p>	<p style="text-align: right;">Page 51</p> <p>1 E. TOOHIGH</p> <p>2 specifically was not considered in eliminating her</p> <p>3 position?</p> <p>4 MS. CABRERA: Objection. You can</p> <p>5 answer the question.</p> <p>6 A Yes.</p> <p>7 Q Does Southern have a policy with</p> <p>8 regard to performance evaluations?</p> <p>9 A Yes.</p> <p>10 Q Did it have that policy when you were</p> <p>11 in charge of Human Resources?</p> <p>12 A Yes.</p> <p>13 Q What was that policy?</p> <p>14 A Specifically? I couldn't tell you</p> <p>15 word for word without looking at a policy, but</p> <p>16 every employee had an annual performance review</p> <p>17 and then an annual salary review.</p> <p>18 Q Were you ultimately responsible for</p> <p>19 making sure that all the annual performance</p> <p>20 evaluations were conducted?</p> <p>21 A Yes. Like herding cats, yes.</p> <p>22 Q How would you keep track of whether</p> <p>23 -- withdrawn. How did you keep track of the</p> <p>24 annual performance evaluations?</p> <p>25 A To the best of my recollection it was</p>
<p style="text-align: right;">Page 50</p> <p>1 E. TOOHIGH</p> <p>2 Identification, as of this date).</p> <p>3 MS. CABRERA: I will make the same</p> <p>4 record on what is being marked as Exhibit</p> <p>5 number 11. It is an undated, un Bate</p> <p>6 stamped document. It does appear to have</p> <p>7 been used in another case which is</p> <p>8 apparently the theme of today, documents</p> <p>9 that counsel is in possession of in</p> <p>10 connection with a completely different case.</p> <p>11 He continues to put them before the witness,</p> <p>12 and I will reserve all rights and objections</p> <p>13 moving forward. Thank you.</p> <p>14 Q Do you remember what this document is?</p> <p>15 A It appears to be a document on female</p> <p>16 applicants who applied for warehouse positions</p> <p>17 during -- I don't know what the time frame is.</p> <p>18 Q So these are the women that applied</p> <p>19 for the warehouse position, correct?</p> <p>20 MS. CABRERA: Objection.</p> <p>21 A I would have no way of knowing that</p> <p>22 based on this, or what time period.</p> <p>23 Q Is it fair to say that since</p> <p>24 performance was not a factor in selecting Maria's</p> <p>25 job for elimination, that Maria's performance</p>	<p style="text-align: right;">Page 52</p> <p>1 E. TOOHIGH</p> <p>2 a systemic process. So there were reports that I</p> <p>3 could generate to see status of completion.</p> <p>4 Q How often did you check those reports?</p> <p>5 A Depending on the time when we were</p> <p>6 getting closer to the deadline, probably fairly</p> <p>7 often.</p> <p>8 Q And when was the deadline for</p> <p>9 completion of the annual performance evaluations?</p> <p>10 A I honestly don't recall the time</p> <p>11 frames. Every company has a different one.</p> <p>12 Q Do you know if their performance</p> <p>13 evaluation system was based upon the calendar</p> <p>14 year?</p> <p>15 A I don't recall.</p> <p>16 MR. MOSER: I will have this marked as</p> <p>17 a single document, but it has some other</p> <p>18 useful documents in it so it is a good</p> <p>19 source of reference.</p> <p>20 (Whereupon an employer's position</p> <p>21 statement was marked as Plaintiff's Exhibit</p> <p>22 12 for Identification, as of this date).</p> <p>23 Q I am going to show you a document</p> <p>24 with Bate stamp SGWS 002601, and the last page of</p> <p>25 this document is SGWS 002686. Do you see that?</p>

13 (Pages 49 to 52)

October 25, 2022

<p style="text-align: right;">Page 53</p> <p>1 E. TOOHIGH</p> <p>2 A Yes, I do.</p> <p>3 Q I would like you to turn to SGWS 2618</p> <p>4 of Plaintiff's Exhibit 12? Does this refresh your</p> <p>5 recollection? Does looking at this page refresh</p> <p>6 your recollection as to when performance</p> <p>7 evaluations were performed?</p> <p>8 A This says it was launched on April 15,</p> <p>9 2010.</p> <p>10 Q Were all employees at the Syosset</p> <p>11 facility reviewed at the same time?</p> <p>12 A No.</p> <p>13 Q So were they reviewed based upon the</p> <p>14 time that they started in a position or something</p> <p>15 else?</p> <p>16 A It was an annual performance, but not</p> <p>17 everyone went in it at the same time.</p> <p>18 Q How did they break it up?</p> <p>19 A The union was not -- was not through</p> <p>20 this process. It was nonunion only.</p> <p>21 Q Okay. How many nonunion employees</p> <p>22 were there at the Syosset facilities?</p> <p>23 A Nonunion? Again, it would just be a</p> <p>24 rough estimate. Maybe 100 to 200.</p> <p>25 Q Were those 100 to 200 individuals all</p>	<p style="text-align: right;">Page 55</p> <p>1 E. TOOHIGH</p> <p>2 past due that they still needed in order to -- to</p> <p>3 submit their performance appraisal in order to be</p> <p>4 in on time.</p> <p>5 Q What were the consequences to a</p> <p>6 manager who did not submit performance appraisals?</p> <p>7 A Nothing severe enough. You have a lot</p> <p>8 of work you have to do to get evaluations.</p> <p>9 Q Can you describe the consequences?</p> <p>10 A I believe there are not consequences.</p> <p>11 Q Can you think of any good reason why</p> <p>12 an annual performance evaluation would not be</p> <p>13 performed for a nonunion employee?</p> <p>14 A Yes.</p> <p>15 Q What good reasons can you think of?</p> <p>16 A Leave of absences, too new to the</p> <p>17 role.</p> <p>18 Q And besides the employee being on a</p> <p>19 leave of absence -- withdrawn. When you say too</p> <p>20 new to the role do you mean that -- an employee</p> <p>21 could recently have had his or her role changed</p> <p>22 and would not be in that particular role for a</p> <p>23 significant enough time to accurately assess their</p> <p>24 performance?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 54</p> <p>1 E. TOOHIGH</p> <p>2 reviewed at the same time?</p> <p>3 A To the best of my recollection, yes.</p> <p>4 Q Were all of their performance</p> <p>5 appraisals due on a specific date?</p> <p>6 A Yes.</p> <p>7 Q You are not sure what that date is?</p> <p>8 A I don't recall.</p> <p>9 Q And what procedure would you follow to</p> <p>10 make sure that all of those performance appraisals</p> <p>11 were actually submitted? I will withdraw that</p> <p>12 question. Let's go back. Describe the</p> <p>13 performance appraisal process at Southern when you</p> <p>14 were the VP of HR?</p> <p>15 A What the process was?</p> <p>16 Q Yes.</p> <p>17 A Again, to the best of my</p> <p>18 recollection? The process would be the system</p> <p>19 would launch the process so it would open up for a</p> <p>20 specific period of time. It would be communicated</p> <p>21 out. We would do training programs for each of</p> <p>22 the leaders to know how to utilize the system, how</p> <p>23 to best write an evaluation, how it needed to get</p> <p>24 done. There would be communication on the time</p> <p>25 line. There would be reminders when somebody was</p>	<p style="text-align: right;">Page 56</p> <p>1 E. TOOHIGH</p> <p>2 Q And what would you consider to be too</p> <p>3 new to the role in terms of time?</p> <p>4 A I believe at the time it was anybody</p> <p>5 who was not in the role for six months, but again</p> <p>6 I am going from recall here and not from a</p> <p>7 position of knowledge.</p> <p>8 Q And aside from someone who had taken</p> <p>9 of leave of absence or someone who was too new to</p> <p>10 the role were there any other valid reasons why a</p> <p>11 performance evaluation would not be prepared for</p> <p>12 each nonunion employee at the Southern facility in</p> <p>13 Syosset?</p> <p>14 A Nothing that comes to me on top of my</p> <p>15 head. Nothing else.</p> <p>16 Q Would it surprise you if I told you</p> <p>17 that Maria Suarez was not given an annual</p> <p>18 performance evaluation?</p> <p>19 MS. CABRERA: Objection.</p> <p>20 Q For every year during which she</p> <p>21 worked?</p> <p>22 A I would need to know the years and</p> <p>23 what was going on to took a look at that but -- I</p> <p>24 would be surprised.</p> <p>25 Q Why would you be surprised?</p>

14 (Pages 53 to 56)

October 25, 2022

Page 57	Page 59
<p>1 E. TOOHIGH</p> <p>2 A (No answer).</p> <p>3 Q Is that because this is a company</p> <p>4 policy that all managers are supposed to follow?</p> <p>5 MS. CABRERA: Objection to the form of</p> <p>6 the question. You can answer the question.</p> <p>7 A It would be more a surprise because of</p> <p>8 the hard work I and my team puts in to make sure</p> <p>9 everyone does the performance appraisal process</p> <p>10 and realizes the value of it. That's where my</p> <p>11 surprise would come from.</p> <p>12 Q Would you review all performance</p> <p>13 appraisals that were submitted by all managers at</p> <p>14 the Southern facility in Syosset?</p> <p>15 A No.</p> <p>16 Q When we look at Plaintiff's Exhibit 10</p> <p>17 for identification there is a date on here of May</p> <p>18 22, 2014. Do you see that?</p> <p>19 A Yes.</p> <p>20 Q Do you know when Southern became aware</p> <p>21 of this lawsuit?</p> <p>22 A No.</p> <p>23 Q Is it fair to say that they became</p> <p>24 aware of this lawsuit before the end of 2014?</p> <p>25 A Yes.</p>	<p>1 E. TOOHIGH</p> <p>2 and April as to the time frame of -- performance</p> <p>3 evaluations based on these documents. So I would</p> <p>4 say based on that the next one would have been due</p> <p>5 in February, or March, or April of 2015.</p> <p>6 Q I am going to share with you that the</p> <p>7 first performance evaluation after this one that</p> <p>8 has been provided is -- can be found at SGWS 2665.</p> <p>9 So we have a performance evaluation. If we look</p> <p>10 at SGWS 2639 the first page has the date.</p> <p>11 A Mm-hmm.</p> <p>12 Q The date of this is 2/1/2013, correct?</p> <p>13 A Yes.</p> <p>14 Q Does that mean this covered the period</p> <p>15 from 2012 to 2013?</p> <p>16 A Yes.</p> <p>17 Q And then the next performance</p> <p>18 appraisal that was provided, annual performance</p> <p>19 appraisal that was provided by Southern, was for</p> <p>20 2015 to 2016. Do you see that on page SGWS 2665?</p> <p>21 A Did you skip over 2014?</p> <p>22 Q I apologize. Okay. So you are</p> <p>23 correct. So if we look at SGWS 2645 this</p> <p>24 particular performance evaluation would have</p> <p>25 covered the period from 2013 to 2014, correct?</p>
Page 58	Page 60
<p>1 E. TOOHIGH</p> <p>2 MS. CABRERA: Objection.</p> <p>3 Q And if we look at what has been marked</p> <p>4 as Exhibit 12 do you know if this document</p> <p>5 contains all performance reevaluations for Maria</p> <p>6 Suarez on and after 2010?</p> <p>7 A I wouldn't know. This document was</p> <p>8 prepared after I was no longer with the company.</p> <p>9 Q I will draw your attention to 2645.</p> <p>10 Do you recognize this document?</p> <p>11 A It appears to be an evaluation from</p> <p>12 2014 for Maria Suarez.</p> <p>13 Q Why did they call it a launch?</p> <p>14 A It is just when the system launches</p> <p>15 out a task.</p> <p>16 Q I want you to turn to page SGWS 2651</p> <p>17 which is the last -- well, this is the last page</p> <p>18 of this performance evaluation, the launch for</p> <p>19 Maria Suarez. It appears to say page 7 of 7.</p> <p>20 Q Okay. And the date on here is May</p> <p>21 20, 2014, correct?</p> <p>22 A Yes.</p> <p>23 Q So when would Maria Suarez' next</p> <p>24 performance evaluation have been due?</p> <p>25 A The dates range from February, March,</p>	<p>1 E. TOOHIGH</p> <p>2 A Correct.</p> <p>3 Q And then there should have been a</p> <p>4 performance evaluation, if the policy was being</p> <p>5 followed, that covered 2014 to 2015, correct?</p> <p>6 A Correct.</p> <p>7 Q Do you know whether one was completed</p> <p>8 for Maria Suarez?</p> <p>9 A I don't know.</p> <p>10 Q Can you think of any reason why</p> <p>11 Southern would not provide that or not have it?</p> <p>12 A I don't know.</p> <p>13 Q The 2016 performance appraisal for</p> <p>14 Maria Suarez if you look at SGWS 2665, this is</p> <p>15 part of Exhibit J. Do you see that?</p> <p>16 A Yes.</p> <p>17 Q If you look at 2646 it says in Exhibit</p> <p>18 J, can you tell when this performance evaluation</p> <p>19 was issued?</p> <p>20 MS. CABRERA: Objection to the form of</p> <p>21 the question.</p> <p>22 A (No answer).</p> <p>23 Q Can you tell what period of time this</p> <p>24 performance evaluation covers?</p> <p>25 A If it is for 2/16. It would cover the</p>

15 (Pages 57 to 60)

October 25, 2022

<p style="text-align: right;">Page 61</p> <p>1 E. TOOHI</p> <p>2 year of 2015.</p> <p>3 Q Look at SGWS 2669. Target due date.</p> <p>4 Do you see that?</p> <p>5 A Yes.</p> <p>6 Q What does that mean?</p> <p>7 A It looks like it is adopt plan, and it</p> <p>8 was a file on communication that was determined</p> <p>9 with Maria to be done by June 30.</p> <p>10 Q It goes from 2669 to 2670. Do you see</p> <p>11 that?</p> <p>12 A Yes, sir.</p> <p>13 Q Should there have been a signature</p> <p>14 page attached to this?</p> <p>15 A I don't know. I didn't prepare this</p> <p>16 document.</p> <p>17 Q Who prepared the document?</p> <p>18 A It was after I left.</p> <p>19 Q When did you leave again?</p> <p>20 A My last official day was December 31,</p> <p>21 2018. I was a consultant through '19, but I had</p> <p>22 no -- I wasn't part of this process.</p> <p>23 Q So you are saying you were not there</p> <p>24 when this performance appraisal was issued?</p> <p>25 A I am saying I wasn't there when this</p>	<p style="text-align: right;">Page 63</p> <p>1 E. TOOHI</p> <p>2 A I don't recall. I was involved in the</p> <p>3 process, but I don't recall if I made the</p> <p>4 decision.</p> <p>5 Q So you don't recall if you were</p> <p>6 responsible for the decision to give Maria Suarez</p> <p>7 the WMI administrator position?</p> <p>8 A I was involved in the process. I</p> <p>9 don't recall if it was my decision.</p> <p>10 Q Describe for me the process.</p> <p>11 A It would have been a position that was</p> <p>12 posted. People would have interviewed through the</p> <p>13 process. Interview notes would have been</p> <p>14 compared, and the decision would have been made as</p> <p>15 to who was the most qualified for the position.</p> <p>16 And those positions would be offered. Then they</p> <p>17 would also be -- I would have to normally have to</p> <p>18 approve salaries and get that all signed off on.</p> <p>19 Q Do you recall the process specifically</p> <p>20 with regard to Maria Suarez?</p> <p>21 A I don't recall specifically with Maria</p> <p>22 Suarez. That's the overall process that would</p> <p>23 have been followed.</p> <p>24 Q Did you have any conversations with</p> <p>25 anyone about selecting Maria Suarez for the WMI</p>
<p style="text-align: right;">Page 62</p> <p>1 E. TOOHI</p> <p>2 document was created. I don't know where this</p> <p>3 came from.</p> <p>4 Q Was there a practice and policy during</p> <p>5 the time that you were the VP of Human Resources</p> <p>6 that employees would sign their performance</p> <p>7 evaluations?</p> <p>8 A There was a time where it changed in</p> <p>9 the system where it became electronic signatures.</p> <p>10 And that there was also a process where it would</p> <p>11 have been -- it had to be signed and then scanned</p> <p>12 in so not always was it in the system, but I don't</p> <p>13 recall when the transition was. I just recall</p> <p>14 there being difficulty at that time.</p> <p>15 Q Okay.</p> <p>16 A So I don't know when that was.</p> <p>17 Q Do you know if that is the reason why</p> <p>18 there is no written signature to Exhibit J?</p> <p>19 A No.</p> <p>20 Q Do you know if Exhibit J was ever</p> <p>21 given to Maria Suarez?</p> <p>22 A No.</p> <p>23 Q Were you involved at all in the</p> <p>24 decision to give Maria Suarez the WMI</p> <p>25 administrator position?</p>	<p style="text-align: right;">Page 64</p> <p>1 E. TOOHI</p> <p>2 administrator position?</p> <p>3 A I would have had to if it went</p> <p>4 through.</p> <p>5 Q Do you recall any of those</p> <p>6 conversations?</p> <p>7 A Not specifically.</p> <p>8 Q Who came up with the WMI administrator</p> <p>9 job description?</p> <p>10 A I believe it was a corporate function</p> <p>11 based on the automation of the new technology that</p> <p>12 was coming in, and we were following suit what was</p> <p>13 being done in other areas.</p> <p>14 Q So who provided that?</p> <p>15 A Specifically?</p> <p>16 Q Yes.</p> <p>17 A I don't know.</p> <p>18 Q I am going to show you what was</p> <p>19 previously marked as Plaintiff's Exhibit 3 for</p> <p>20 identification. Do you recognize this document?</p> <p>21 A I recognize the process but not this</p> <p>22 specific document.</p> <p>23 Q What process do you recognize this to</p> <p>24 be?</p> <p>25 A Well, this is a printout from the</p>

16 (Pages 61 to 64)

October 25, 2022

<p style="text-align: right;">Page 65</p> <p>1 E. TOOHIH</p> <p>2 applicant tracking system that would document the</p> <p>3 days and times that everything was either posted,</p> <p>4 approved documents the process. Attached to it is</p> <p>5 the position profile, the job descriptions, and</p> <p>6 details that would have been posted for employees</p> <p>7 to apply to and externals.</p> <p>8 Q So if we look at SGWS 00896, which is</p> <p>9 the second page of this document, there is an</p> <p>10 entry here towards the top of the page. It says</p> <p>11 January 27, 2016 at 4:27:32 p.m. What is that</p> <p>12 indicating?</p> <p>13 A I don't recall what the language</p> <p>14 means.</p> <p>15 Q Was this particular job description</p> <p>16 created by Dina Wald Margolis?</p> <p>17 A Yes, it looks like it.</p> <p>18 Q It says here created from duplication</p> <p>19 of 00001754. Do you know what that means?</p> <p>20 A I believe that means it was a job</p> <p>21 previously posed, and she just cut and pasted to</p> <p>22 save herself the trouble of -- creating it from</p> <p>23 scratch.</p> <p>24 Q Do you know how she selected that?</p> <p>25 A Systemically?</p>	<p style="text-align: right;">Page 67</p> <p>1 E. TOOHIH</p> <p>2 actually created this position, right?</p> <p>3 A According to this piece of paper in</p> <p>4 front of me it appears that she did it.</p> <p>5 Q And when we look at the first page</p> <p>6 there's at the very bottom line it says</p> <p>7 requisition approval requested. Can you explain</p> <p>8 what that is?</p> <p>9 A Before any requisition can be approved</p> <p>10 and posted to the job site it needs to be approved</p> <p>11 by the leadership of the department and myself.</p> <p>12 Q And did these individuals that are</p> <p>13 listed, Kevin Randall, Roy Kohn, Beth Toohig,</p> <p>14 Larry Goodrich, did they all have to approve this,</p> <p>15 that specific order?</p> <p>16 A Yes. That's the way that the system</p> <p>17 does. It does not get approved by HR until after</p> <p>18 it has already been approved by the leadership</p> <p>19 team, and then after I approve it it would go to</p> <p>20 Larry Goodrich for approval.</p> <p>21 Q So who was Larry Goodrich?</p> <p>22 A The general manager.</p> <p>23 Q Of what?</p> <p>24 A New York State.</p> <p>25 Q Were all requisitions for new jobs</p>
<p style="text-align: right;">Page 66</p> <p>1 E. TOOHIH</p> <p>2 Q Yes. How did she come -- do you know</p> <p>3 why she created this particular job?</p> <p>4 A It was created in compliance with what</p> <p>5 they did with the new WMI warehouse management</p> <p>6 system.</p> <p>7 Q She created this job at someone else's</p> <p>8 request?</p> <p>9 A Yes. Dina would make them up.</p> <p>10 Q Who would request her to create this</p> <p>11 position?</p> <p>12 A I would venture to guess that it was</p> <p>13 Kevin Randall as he is listed as a hiring manager.</p> <p>14 Q Well, I don't want you to guess.</p> <p>15 A That's the only way I could guess from</p> <p>16 this document.</p> <p>17 Q Okay. So do you know who told Dina</p> <p>18 Wald Margolis to create this particular position?</p> <p>19 A No.</p> <p>20 Q Do you know why she created it from a</p> <p>21 duplication of 00007154?</p> <p>22 A No.</p> <p>23 Q Would Dina Wald Margolis know that?</p> <p>24 A I have to assume on her behalf.</p> <p>25 Q This indicates that she is the one who</p>	<p style="text-align: right;">Page 68</p> <p>1 E. TOOHIH</p> <p>2 approved by Larry Goodrich?</p> <p>3 A To the best of my recollection, yes.</p> <p>4 Q What is the process for approving this</p> <p>5 particular requisition?</p> <p>6 A Can you clarify that?</p> <p>7 Q Well, you receive this request.</p> <p>8 Requisition approval requested, correct?</p> <p>9 A Yes.</p> <p>10 Q And at some point you have to approve</p> <p>11 it?</p> <p>12 A Yes.</p> <p>13 Q What process did you follow in</p> <p>14 approving it?</p> <p>15 A When I approved positions I would --</p> <p>16 -- if I did not already have knowledge of it I</p> <p>17 would speak to the leader of that department,</p> <p>18 confirm the validity of their request, confirm it</p> <p>19 was budgeted, that it was something that we should</p> <p>20 be replacing. I would make sure I understood all</p> <p>21 of those details and approve it. Often I already</p> <p>22 knew about it ahead of time because we already had</p> <p>23 conversations, or if it was an employee leaving or</p> <p>24 something that was going on we already knew it was</p> <p>25 approved so it was a much easier systemic clicking</p>

17 (Pages 65 to 68)

October 25, 2022

<p style="text-align: right;">Page 69</p> <p>1 E. TOOHI</p> <p>2 of a button.</p> <p>3 Q Do you recall the process that you</p> <p>4 followed specifically in approving this</p> <p>5 requisition?</p> <p>6 A Not in 2016.</p> <p>7 Q As part of your process in approving</p> <p>8 requisitions did you review the job description?</p> <p>9 A I would say rarely.</p> <p>10 Q Did you review this particular job</p> <p>11 description and the job description begins at SGWS</p> <p>12 0000897?</p> <p>13 A I wouldn't have reviewed it at the</p> <p>14 time of approving this for requisition.</p> <p>15 Q What is the purpose of a job</p> <p>16 description?</p> <p>17 A Outline the key responsibilities of</p> <p>18 the position.</p> <p>19 Q Is it so that the employee is -- that</p> <p>20 the employee knows what they are supposed to be .</p> <p>21 doing?</p> <p>22 MS. CABRERA: Objection to the form of</p> <p>23 the question. You can answer it.</p> <p>24 A Overall the posting gives a general</p> <p>25 overview of what the expectations in the role to</p>	<p style="text-align: right;">Page 71</p> <p>1 E. TOOHI</p> <p>2 her job?</p> <p>3 MS. CABRERA: Objection to the form of</p> <p>4 the question?</p> <p>5 A It should be.</p> <p>6 Q Okay. I would like you to read this</p> <p>7 job description for me.</p> <p>8 A Out loud?</p> <p>9 Q No, no, to yourself. Is this supposed</p> <p>10 to be an accurate reflection of the principal</p> <p>11 responsibilities that Maria had as WMI</p> <p>12 administrator?</p> <p>13 A It says job elements, but that's what</p> <p>14 it is intended.</p> <p>15 Q So this is intended to be -- this is</p> <p>16 intended to accurately describe -- is this</p> <p>17 intended to accurately describe what Maria's job</p> <p>18 duties were as WMI administrator?</p> <p>19 MS. CABRERA: Objection. It was asked</p> <p>20 and answered. You can answer it again.</p> <p>21 A It says it is the principal job</p> <p>22 elements for making decisions related to job</p> <p>23 performance. It says it is not intended to be an</p> <p>24 exhaustive list of all responsibilities, skills,</p> <p>25 and efforts of working conditions.</p>
<p style="text-align: right;">Page 70</p> <p>1 E. TOOHI</p> <p>2 see whether or not somebody would qualify for the</p> <p>3 role.</p> <p>4 Q Does the job description -- well, is</p> <p>5 the job description an accurate reflection of the</p> <p>6 principal job elements for making decisions</p> <p>7 related to the employees job performance?</p> <p>8 MS. CABRERA: Objection to the form of</p> <p>9 the question.</p> <p>10 A Can you clarify the question?</p> <p>11 Q Well, I am going to draw your</p> <p>12 attention to SGWS 0000899. If you look at the</p> <p>13 comments section on the top, do you see that?</p> <p>14 A Yes, up here.</p> <p>15 Q I will read this into the record.</p> <p>16 This position description is not intended and</p> <p>17 should not be construed to be an exhaustive list</p> <p>18 of all responsibilities, skills, efforts, or</p> <p>19 working conditions associated with the job. It is</p> <p>20 intended however to be an accurate reflection of</p> <p>21 these principal job elements for making decisions</p> <p>22 related to job performance, employees'</p> <p>23 development, and compensation. Does that mean</p> <p>24 that this job description should be used as a</p> <p>25 guide to determine whether Maria was performing</p>	<p style="text-align: right;">Page 72</p> <p>1 E. TOOHI</p> <p>2 Q But it is intended to be the basis on</p> <p>3 which she would be evaluated?</p> <p>4 A Yes.</p> <p>5 Q Can you figure out from reading this</p> <p>6 job description what her responsibilities were?</p> <p>7 A Develop and implement WMS mixed</p> <p>8 projects, designs --</p> <p>9 Q I understand that it has a listing of</p> <p>10 a bunch of different things here.</p> <p>11 A Okay.</p> <p>12 Q My question is, looking at this do you</p> <p>13 have an understanding as to what her</p> <p>14 responsibilities were as WMI administrator?</p> <p>15 A I have what this tells me, yes, but</p> <p>16 she is responsible for the WMI administration, she</p> <p>17 is responsible to work along with the warehouse</p> <p>18 and operations team, she is to be looking at</p> <p>19 trends and technologies and make sure she is</p> <p>20 making recommendations for improvement. She is</p> <p>21 supposed to be interacting with the supply chain</p> <p>22 and the warehouse to make sure that all inventory</p> <p>23 is measured and managed. That's what this reads</p> <p>24 to me.</p> <p>25 Q And in your opinion does this clearly</p>

18 (Pages 69 to 72)

October 25, 2022

<p style="text-align: right;">Page 73</p> <p>1 E. TOOHIH</p> <p>2 indicate to her what her job responsibilities</p> <p>3 would be as WMS administrator?</p> <p>4 A I can't answer for Maria, but if she</p> <p>5 had any questions she would have asked her manager</p> <p>6 for clarification.</p> <p>7 MR. MOSER: Read back the question.</p> <p>8 (The question was read back by the</p> <p>9 court reporter).</p> <p>10 A I answered that I can't answer for</p> <p>11 Maria, but if Maria had some questions or concerns</p> <p>12 on it she should be asking her manager.</p> <p>13 Q My question is not -- you answering</p> <p>14 for Maria. My question is, in your opinion does</p> <p>15 this accurately describe what the WMI</p> <p>16 administrator's duties are?</p> <p>17 MS. CABRERA: Objection. No. You</p> <p>18 asked a different question. You asked if --</p> <p>19 it is clear to Maria. You asked a different</p> <p>20 question.</p> <p>21 Q In your opinion is it clear what the</p> <p>22 WMI administrators' duties are from this job</p> <p>23 description?</p> <p>24 A I would say it is a clearly overall</p> <p>25 concept of what you have described supposed to be</p>	<p style="text-align: right;">Page 75</p> <p>1 E. TOOHIH</p> <p>2 for supporting Southern Wine's Manhattan software</p> <p>3 (a WMI-I series). The candidate will assist to</p> <p>4 configure, operate, train, oversee, and analyze</p> <p>5 our WM (and operations) functions to achieve</p> <p>6 project objectives, insure smooth startup and</p> <p>7 transition by providing leadership and training to</p> <p>8 the local staff." That in your opinion is an</p> <p>9 accurate description of the WMI administrator's</p> <p>10 position?</p> <p>11 A I think it gives a very good overview.</p> <p>12 Q And what does it mean by providing</p> <p>13 leadership and training to the local staff? Who</p> <p>14 are the local staff?</p> <p>15 A Employees in the New York location.</p> <p>16 Q Why would it say local staff if she</p> <p>17 was in the New York location?</p> <p>18 A Because these job descriptions are</p> <p>19 used across the country. The local team.</p> <p>20 Q Do you know whose job description this</p> <p>21 was originally?</p> <p>22 A No.</p> <p>23 Q Would Dina Wald Margolis know that?</p> <p>24 A Potentially if she pulled out what</p> <p>25 requisitions she duplicated and looked at the</p>
<p style="text-align: right;">Page 74</p> <p>1 E. TOOHIH</p> <p>2 doing as a WMI administrator. The actual tasks or</p> <p>3 the day-to-day responsibilities or the process of</p> <p>4 management is not included here.</p> <p>5 Q When we look at building capabilities,</p> <p>6 20 percent on SGWS 898 do you see building</p> <p>7 capability 20 percent?</p> <p>8 A Yes.</p> <p>9 Q What does that refer to?</p> <p>10 A Building capabilities?</p> <p>11 Q Yes.</p> <p>12 A I would say it is twofold. Building</p> <p>13 capabilities is for developing a team and holding</p> <p>14 them accountable and also building capabilities of</p> <p>15 the department overall for efficiencies. That's</p> <p>16 how I would translate it.</p> <p>17 Q Do you know what it means when it says</p> <p>18 stay current on emerging warehouse MHE solutions,</p> <p>19 trends, technologies, and best practices?</p> <p>20 A I know what it means to stay current</p> <p>21 on emerging trends. I don't know what MHE</p> <p>22 solutions are. I don't know what that is.</p> <p>23 Q If we look at SGWS 000897 I will read</p> <p>24 that short description external. "The</p> <p>25 administrator will act as the functional resource</p>	<p style="text-align: right;">Page 76</p> <p>1 E. TOOHIH</p> <p>2 application to see who was offered that position.</p> <p>3 Q This requisition was filled on May 5,</p> <p>4 2016, do you see that?</p> <p>5 A Yes.</p> <p>6 Q Does that mean that Maria was given</p> <p>7 this position on May 5, 2016?</p> <p>8 A It would appear it was listed in the</p> <p>9 system that Maria was hired on May 5, 2016.</p> <p>10 Q And in considering whether or not she</p> <p>11 met the qualifications for this position, what</p> <p>12 documents would have been reviewed?</p> <p>13 A In theory?</p> <p>14 Q What documents should have been</p> <p>15 reviewed as part of the policy and procedure at</p> <p>16 Southern?</p> <p>17 A She would have been interviewed. She</p> <p>18 would have looked at job performance, history.</p> <p>19 She would have looked at her current job and</p> <p>20 responsibilities.</p> <p>21 Q So the individual who selected her</p> <p>22 should have looked at her performance appraisals?</p> <p>23 A No.</p> <p>24 MR. MOSER: Mark this as Plaintiff's</p> <p>25 Exhibit 13.</p>

19 (Pages 73 to 76)

October 25, 2022

<p style="text-align: right;">Page 77</p> <p>1 E. TOOHIGH</p> <p>2 (Whereupon an employee handbook was</p> <p>3 marked as Plaintiff's Exhibit 13 for</p> <p>4 Identification, as of this date).</p> <p>5 Q So in your opinion the person who made</p> <p>6 the decision to give this job to Maria Suarez</p> <p>7 should not have reviewed her performance</p> <p>8 evaluations?</p> <p>9 MS. CABRERA: Objection to the form of</p> <p>10 the question.</p> <p>11 A The practice has been HR would review</p> <p>12 the file to make sure that the person was eligible</p> <p>13 for the opportunity. We would not share the</p> <p>14 files. We would not share the actual performance</p> <p>15 appraisals.</p> <p>16 Q With woman?</p> <p>17 A With the hiring manager.</p> <p>18 Q So have you ever seen what is marked</p> <p>19 as Plaintiff's Exhibit 13, the employee handbook?</p> <p>20 A Yes.</p> <p>21 Q And was this the employee handbook in</p> <p>22 effect as of May 2016?</p> <p>23 A I am assuming so. You showed me one</p> <p>24 now that said May of 2014. You showed me one</p> <p>25 earlier with a different date.</p>	<p style="text-align: right;">Page 79</p> <p>1 E. TOOHIGH</p> <p>2 A How would we know?</p> <p>3 Q Yes.</p> <p>4 A Well, I would answer it another way.</p> <p>5 We would know if she wasn't.</p> <p>6 Q How would you know that?</p> <p>7 A There would be conversations being had</p> <p>8 on performance management.</p> <p>9 Q So she met the eligibility</p> <p>10 requirements, correct, listed in the manual?</p> <p>11 A Yes.</p> <p>12 Q And she was given the position on May</p> <p>13 5, 2016, correct?</p> <p>14 A Yes.</p> <p>15 Q And when we look back, I would like</p> <p>16 you to take a look at Plaintiff's Exhibit 12 again</p> <p>17 for identification. I will draw your attention to</p> <p>18 SGWS 2665. This is part of Exhibit J. This</p> <p>19 performance appraisal would have covered the</p> <p>20 period from 2015 to 2016, is that correct?</p> <p>21 A Yes.</p> <p>22 Q Can you explain why, if this covers</p> <p>23 the period from 2015 to 2016 and she had only</p> <p>24 received the job on May 5, 2016, why she was being</p> <p>25 evaluated?</p>
<p style="text-align: right;">Page 78</p> <p>1 E. TOOHIGH</p> <p>2 Q That one was earlier. That one</p> <p>3 precedes this one. So was this to the best of</p> <p>4 your knowledge -- was this handbook in effect in</p> <p>5 May 2016?</p> <p>6 A To the best of my knowledge I don't</p> <p>7 know when the new additions have come out.</p> <p>8 Q Okay. If we turn to SGWS 001024, if</p> <p>9 you look at section D eligibility, did Maria meet</p> <p>10 all of the eligibility requirements to apply for</p> <p>11 the WMI administrator position?</p> <p>12 A She had met the minimum qualifications</p> <p>13 for the posted position. She has been in her</p> <p>14 position for six months, was out reading the job</p> <p>15 performances that you indicated in another file.</p> <p>16 I believe she was in good standing as an employee</p> <p>17 so yes, she would have met all criteria to be</p> <p>18 considered for the WMI administrator.</p> <p>19 Q So we already established that the</p> <p>20 last performance review she had received was May</p> <p>21 20, 2014, is that correct?</p> <p>22 A Yes.</p> <p>23 Q How do you know that Maria was</p> <p>24 satisfactorily meeting the job requirements of her</p> <p>25 current position?</p>	<p style="text-align: right;">Page 80</p> <p>1 E. TOOHIGH</p> <p>2 A It is more than six months. It was a</p> <p>3 continuous leader. She was reporting to John</p> <p>4 Wilkinson.</p> <p>5 Q So you don't know when this</p> <p>6 performance evaluation was issued, do you?</p> <p>7 A Not according to the paperwork I have</p> <p>8 in front of me.</p> <p>9 Q Because these are normally -- you had</p> <p>10 testified earlier March, April, or May?</p> <p>11 A Well that was the dates that are on</p> <p>12 this paperwork.</p> <p>13 Q Were they normally issued to Maria</p> <p>14 Suarez?</p> <p>15 MS. CABRERA: Objection. Let her</p> <p>16 finish, and then you can ask her another</p> <p>17 question.</p> <p>18 Q Were you done?</p> <p>19 A No. The question that I answered was</p> <p>20 based on the documents here that these were the</p> <p>21 dates that we had for Maria.</p> <p>22 Q So if Maria started the WMI</p> <p>23 administrator position in May of 2016 when for the</p> <p>24 first time should her performance have been</p> <p>25 reviewed as WMI administrator?</p>

20 (Pages 77 to 80)

October 25, 2022

<p style="text-align: right;">Page 81</p> <p>1 E. TOOHIH</p> <p>2 A Well, when they did the performance</p> <p>3 appraisal it would be for the first few months</p> <p>4 would be her previous position, and then the last</p> <p>5 seven months would be as her WMI administrator</p> <p>6 position. It is a yearly evaluation.</p> <p>7 Q So when she was being rated --</p> <p>8 MR. MOSER: Repeat the last question.</p> <p>9 (The last question was repeated by the</p> <p>10 court reporter).</p> <p>11 A It was February, March, or April of</p> <p>12 2017.</p> <p>13 Q Thank you. Can you explain why she</p> <p>14 was issued a performance appraisal in 2016 for the</p> <p>15 WMI administrator position?</p> <p>16 A Can you explain that question?</p> <p>17 Q Well, this particular performance --</p> <p>18 the performance appraisals are dated with the year</p> <p>19 that they are issued. All of them, correct?</p> <p>20 A Right.</p> <p>21 Q This is a 2016 performance appraisal,</p> <p>22 is that correct?</p> <p>23 A That's correct.</p> <p>24 Q So this would cover the period from</p> <p>25 2015 to 2016?</p>	<p style="text-align: right;">Page 83</p> <p>1 E. TOOHIH</p> <p>2 administrator?</p> <p>3 MS. CABRERA: I will object to the</p> <p>4 form of the question. You can answer it.</p> <p>5 A In my brief overview it appears she</p> <p>6 was evaluated on both.</p> <p>7 Q And where do you see she was evaluated</p> <p>8 based upon her duties as an inventory control</p> <p>9 manager?</p> <p>10 A Just in some of the verbiage talking</p> <p>11 about Maria is very organized. It sounds like it</p> <p>12 went from both prior and after the WMI</p> <p>13 administration.</p> <p>14 Q Can you tell me specifically where in</p> <p>15 this document you see that she was being evaluated</p> <p>16 based upon her ability to do her job as inventory</p> <p>17 control manager?</p> <p>18 A She demonstrated these abilities</p> <p>19 during our July wall to wall inventory.</p> <p>20 Q Where is that?</p> <p>21 A On page 4 of 5. 2668. Where it has</p> <p>22 good analytical skills. She regularly</p> <p>23 demonstrated the skills during during meetings</p> <p>24 prepped for our physical inventories.</p> <p>25 Q Okay. So you referred to SGW 002668,</p>
<p style="text-align: right;">Page 82</p> <p>1 E. TOOHIH</p> <p>2 A Correct.</p> <p>3 Q And we established already that she</p> <p>4 only received the WMI administrator position in</p> <p>5 May 2016?</p> <p>6 A Yes.</p> <p>7 Q So my question is why did she receive</p> <p>8 a performance evaluation for 2016 if her first</p> <p>9 performance evaluation should only have been</p> <p>10 issued in -- in early 2017?</p> <p>11 MS. CABRERA: Objection. It</p> <p>12 mischaracterizes the question and the</p> <p>13 testimony. Your question to her was when</p> <p>14 should her performance evaluation for the</p> <p>15 WMI position should have been done and not</p> <p>16 when a performance evaluation should have</p> <p>17 been done, especially since we all know</p> <p>18 Maria was employed for that year, but you</p> <p>19 can answer the question again and if you</p> <p>20 understand what is being asked.</p> <p>21 A I don't understand what is being</p> <p>22 asked.</p> <p>23 Q Throughout this document was Maria</p> <p>24 being evaluated based upon her ability to do her</p> <p>25 job as inventory control manager or as a WMI</p>	<p style="text-align: right;">Page 84</p> <p>1 E. TOOHIH</p> <p>2 correct?</p> <p>3 A Yes.</p> <p>4 MS. CABRERA: Were you done?</p> <p>5 Q You can continue.</p> <p>6 A That was one example.</p> <p>7 MS. CABRERA: Take your time to read</p> <p>8 the entire document. I don't want a brief</p> <p>9 overview. Take your time. If you need 20</p> <p>10 minutes to read it, take 20 minutes to read</p> <p>11 it. We can all wait.</p> <p>12 A On page 2667. It talks about Maria is</p> <p>13 very organized and plans very well. "She is very</p> <p>14 effective at scheduling her staff and managing the</p> <p>15 processes that they need to perform on a daily</p> <p>16 basis. That would be a combination of both of her</p> <p>17 responsibilities as before and after. Again,</p> <p>18 Maria can lead others through ambiguity in times</p> <p>19 of change. No problems bridging the past and</p> <p>20 advancing new ideas and technologies." That would</p> <p>21 have been part of her inventory control manager</p> <p>22 position.</p> <p>23 Q You are talking about the comments by</p> <p>24 John Wilkinson on 2667, correct?</p> <p>25 A Correct. So on 2666 comments again</p>

21 (Pages 81 to 84)

October 25, 2022

<p style="text-align: right;">Page 85</p> <p>1 E. TOOHIGH</p> <p>2 by John Wilkinson who talks about Maria's</p> <p>3 performance prior to the WMI trainers from coming</p> <p>4 in.</p> <p>5 Q Okay.</p> <p>6 A On that same page Maria has a very</p> <p>7 difficult time communicating with her cycle</p> <p>8 counters, housing managers, and other departments</p> <p>9 would have been as an inventory control managers</p> <p>10 and any discussions, WMI implementation.</p> <p>11 Q Anything else?</p> <p>12 A I would say these are the examples.</p> <p>13 Q So when we look at demonstrated</p> <p>14 skills and results performance goals which is on</p> <p>15 the first page, do you see that?</p> <p>16 A What page was that again?</p> <p>17 Q 2665. SGWS 2665.</p> <p>18 A Are you looking at what part?</p> <p>19 Q I am looking at where it says results</p> <p>20 performance goals 50 percent of appraisal.</p> <p>21 A Mm-hmm.</p> <p>22 Q And then beneath that is -- when we</p> <p>23 look at that was she evaluated based upon her</p> <p>24 ability to perform the WMI administrative</p> <p>25 position?</p>	<p style="text-align: right;">Page 87</p> <p>1 E. TOOHIGH</p> <p>2 manager prior to getting the title of coordinator.</p> <p>3 Q So she had a role in the</p> <p>4 implementation of WMI before she even had the WMI</p> <p>5 administrator position?</p> <p>6 A Yes.</p> <p>7 Q What role did she have?</p> <p>8 A She had to convert what she was</p> <p>9 currently doing manually as an inventory control</p> <p>10 manager and how we were managing inventory to the</p> <p>11 current state, and we had to transition to the new</p> <p>12 state with the WMI new software and capabilities.</p> <p>13 So her role was specifically designed to be able</p> <p>14 to translate what they were currently doing to</p> <p>15 what they were going to be doing in the future so</p> <p>16 she had to be part of the implementation time.</p> <p>17 Q She did that before May 5, 2016?</p> <p>18 A Yes.</p> <p>19 Q When Maria became WMI administrator</p> <p>20 do you know if she was classified as exempt from</p> <p>21 overtime?</p> <p>22 A Yes.</p> <p>23 A I believe the job description says it</p> <p>24 was exempt from overtime.</p> <p>25 Q Did she manage employees?</p>
<p style="text-align: right;">Page 86</p> <p>1 E. TOOHIGH</p> <p>2 A She was evaluated on how she would</p> <p>3 handle a WMI position and the transition to WMI</p> <p>4 which she would have had responsibilities for</p> <p>5 regardless of whether she got the WMI</p> <p>6 administrator position or not.</p> <p>7 Q So in the results and performance</p> <p>8 goals which are 50 percent of the -- 50 percent of</p> <p>9 her appraisal was she being reviewed based upon</p> <p>10 any work she had done as inventory control manager</p> <p>11 before she became WMI administrator?</p> <p>12 A Well, to clarify what it said before,</p> <p>13 the implementation of WMI was an entire project</p> <p>14 that was going to happen regardless of whether</p> <p>15 Maria had the WMI coordinator position or not. So</p> <p>16 as inventory control manager she was responsible</p> <p>17 for the implementation of the new software of WMI.</p> <p>18 MR. MOSER: Read back the question.</p> <p>19 (The question was repeated by the</p> <p>20 court reporter).</p> <p>21 A Yes, because it was a project of WMI</p> <p>22 implementation so it was an entire major project</p> <p>23 to convert the warehouse inventory tracking system</p> <p>24 to the new software, the new WMI, which would be</p> <p>25 part of her responsibilities as inventory control</p>	<p style="text-align: right;">Page 88</p> <p>1 E. TOOHIGH</p> <p>2 A She directed the work of the</p> <p>3 employees.</p> <p>4 Q As WMI administrator whose work did</p> <p>5 she direct?</p> <p>6 A The work of the inventory control</p> <p>7 clerks if I remember the titles correctly.</p> <p>8 Q This was after she became WMI</p> <p>9 administrator?</p> <p>10 A Yes.</p> <p>11 Q Describe your understanding of how she</p> <p>12 controlled their work.</p> <p>13 A Basically I think she did an analysis</p> <p>14 of any discrepancies from the inventory. She</p> <p>15 assigned it to a control clerk to investigate.</p> <p>16 She then investigated their work to make sure it</p> <p>17 was accurate and answered the question and then</p> <p>18 helped them correct any inventory discrepancies.</p> <p>19 Q Was she their supervisor?</p> <p>20 A She did not have the right to</p> <p>21 discipline them because they were actually going</p> <p>22 to be disciplined by another manager, but she did</p> <p>23 all of their work, you know, directed all of their</p> <p>24 work, made sure that they were effective doing</p> <p>25 what they needed to do and getting all of the</p>

22 (Pages 85 to 88)

October 25, 2022

<p style="text-align: right;">Page 89</p> <p>1 E. TOOHI</p> <p>2 things that were done that were coming up from the</p> <p>3 inventory analysis. Was she their supervisor? In</p> <p>4 effect just as I came to direct their work.</p> <p>5 Q If she didn't have, who was their</p> <p>6 manager?</p> <p>7 A Um, for when it came to disciplining</p> <p>8 and attendance tracks all of that it was done by a</p> <p>9 warehouse supervisor.</p> <p>10 Q Barry Finkelstein?</p> <p>11 A I think so.</p> <p>12 Q Why was that handled by Barry</p> <p>13 Finkelstein after she became WMI administrator?</p> <p>14 A He had the resources in which to</p> <p>15 handle that.</p> <p>16 Q What do you mean resources?</p> <p>17 A If there were absenteeism or things</p> <p>18 going on he had the staffing that would be able to</p> <p>19 jump in and cover for absenteeism. He had the</p> <p>20 relationship with the union in order to write up</p> <p>21 disciplines and get those processed.</p> <p>22 Q So is there any other reason why Barry</p> <p>23 Finkelstein became the manager of the inventory</p> <p>24 control clerks?</p> <p>25 A None that I recall.</p>	<p style="text-align: right;">Page 91</p> <p>1 E. TOOHI</p> <p>2 A Again, there were a lot of employees</p> <p>3 there. You want specific job titles? What are</p> <p>4 you looking for?</p> <p>5 Q Well, give me an example of anyone who</p> <p>6 is a manager of a particular function?</p> <p>7 A Maria.</p> <p>8 Q Other than Maria.</p> <p>9 A On the sales side we have people who</p> <p>10 were in talent. They do the marketing and the</p> <p>11 research. They don't manage people. They manage</p> <p>12 the function.</p> <p>13 Q What do you mean the south side?</p> <p>14 A No, on the sales side.</p> <p>15 Q On the operations side, besides Maria</p> <p>16 Suarez was there any other individual who was the</p> <p>17 manager of a function?</p> <p>18 A No. You have HR business partner or</p> <p>19 generalist was a manager of function, not of</p> <p>20 people. You would have in the call center there</p> <p>21 were managers of function, not people. But I</p> <p>22 would have to look at an exact, you know, job</p> <p>23 description or things in order to give you a more</p> <p>24 accurate definition. There were more than just</p> <p>25 Maria Suarez.</p>
<p style="text-align: right;">Page 90</p> <p>1 E. TOOHI</p> <p>2 Q I asked John Wilkinson at his</p> <p>3 deposition who Maria supervised as WMI</p> <p>4 administrator, and he said nobody. Does that</p> <p>5 sound accurate?</p> <p>6 MS. CABRERA: Objection as that is a</p> <p>7 complete mischaracterization of the</p> <p>8 testimony, and we may have to bring up the</p> <p>9 transcript but you can answer the question?</p> <p>10 A Not to me, no.</p> <p>11 Q And were there any other supervisors</p> <p>12 -- and so was Maria still a manager when she</p> <p>13 became WMI administrator?</p> <p>14 A In what sense? Can you clarify that</p> <p>15 question?</p> <p>16 Q What is a manager at Southern when we</p> <p>17 talk about managers? What is a manager?</p> <p>18 A It depends on the role. I don't know</p> <p>19 that I can answer that question theory based.</p> <p>20 Q So you can't tell me if someone has</p> <p>21 the title of manager at Southern what that means?</p> <p>22 A A manager could be of people or a</p> <p>23 manager of function.</p> <p>24 Q And so which individuals were managers</p> <p>25 of people at Southern?</p>	<p style="text-align: right;">Page 92</p> <p>1 E. TOOHI</p> <p>2 Q Okay. The other individuals who were</p> <p>3 managers of functions, were they exempt?</p> <p>4 A Yes.</p> <p>5 Q And did the individuals who managed</p> <p>6 functions also manage employees?</p> <p>7 A Define how you are using the word</p> <p>8 manage employees. Did they direct the work?</p> <p>9 Q Well, what does it mean at Southern</p> <p>10 when someone has disciplinary authority over</p> <p>11 another individual? Does that mean they are their</p> <p>12 manager?</p> <p>13 A Not necessarily.</p> <p>14 Q Okay. So I am trying to wrap my head</p> <p>15 around this.</p> <p>16 A It is a union environment.</p> <p>17 Q So why was it -- I am sure it is a</p> <p>18 union environment, but before she became WMI</p> <p>19 administrator Maria had disciplinary authority</p> <p>20 over her employees, correct?</p> <p>21 A Yes.</p> <p>22 Q And that was when she became WMI</p> <p>23 administrator that was taken away?</p> <p>24 A It was reclassified.</p> <p>25 Q It was taken away?</p>

23 (Pages 89 to 92)

October 25, 2022

<p style="text-align: right;">Page 93</p> <p>1 E. TOOHIGH</p> <p>2 MS. CABRERA: Objection. You won't</p> <p>3 argue with the witness on the record. You</p> <p>4 are not going to argue with the witness on</p> <p>5 the record. If you don't like her answer</p> <p>6 that's too bad.</p> <p>7 Q It was reassigned, correct. So it was</p> <p>8 reassigned to another individual, but it wasn't</p> <p>9 taken away from her, is that correct?</p> <p>10 A It was not part of the new</p> <p>11 responsibilities of the WMI administrator. The</p> <p>12 focus of that job was the technicalities and the</p> <p>13 infrequencies of understanding the WMI system and</p> <p>14 being able to direct the work which was more of</p> <p>15 the skill set we needed in that role versus</p> <p>16 somebody who had union relations and union</p> <p>17 relationships and was able to discipline somebody.</p> <p>18 Her skill set had a higher skill set.</p> <p>19 Q Who determined that particular skill</p> <p>20 set?</p> <p>21 A (No answer).</p> <p>22 Q Who determined that this particular</p> <p>23 role was not a managerial role?</p> <p>24 MS. CABRERA: Objection. It</p> <p>25 mischaracterizes the testimony. It is not</p>	<p style="text-align: right;">Page 95</p> <p>1 E. TOOHIGH</p> <p>2 clerks before she became WMI administrator?</p> <p>3 A To my knowledge? When I had been</p> <p>4 talking or working with Maria it was very paper</p> <p>5 centric, was very kind of difficult to track large</p> <p>6 quantities of inventory because it was not a</p> <p>7 strong tracking or software system, so there were</p> <p>8 a lot of challenges with staffing, having enough</p> <p>9 staffing, the staffing calling out and trying to</p> <p>10 get the work done, working lots of weekends, so it</p> <p>11 was a labor intensive kind of a role which would</p> <p>12 have been eliminated or systemic solutions to</p> <p>13 create with the conversion to the WMI system.</p> <p>14 Q So as a manager of the inventory</p> <p>15 control clerks in her management role before she</p> <p>16 became WMI administrator, what were her duties as</p> <p>17 a manager?</p> <p>18 MS. CABRERA: Objection. Again,</p> <p>19 continues to mischaracterize the testimony.</p> <p>20 You can answer the question if you can.</p> <p>21 A I am not sure what you are asking me.</p> <p>22 Q You don't understand?</p> <p>23 A No. I am not trying to be difficult.</p> <p>24 I don't understand what you are asking.</p> <p>25 MS. CABRERA: Objection. If she says</p>
<p style="text-align: right;">Page 94</p> <p>1 E. TOOHIGH</p> <p>2 what she said.</p> <p>3 A I said it was an exempt level role of</p> <p>4 somebody who was directing the work, and what</p> <p>5 needs, and it was a job description that had been</p> <p>6 created. It was replicated in other areas so who</p> <p>7 exactly defined that? I don't know.</p> <p>8 Q So what was Barry Finkelstein's role</p> <p>9 in managing the inventory control clerks?</p> <p>10 A To the best of my recollection his</p> <p>11 role was to make sure if there was disciplinary</p> <p>12 action issues he had conversations with the union</p> <p>13 on their behalf. If one of them called out sick</p> <p>14 or was on an FMLA, or on a permanent leave he</p> <p>15 would find somebody on his team who would be able</p> <p>16 to support the work that Maria failed to get done.</p> <p>17 Q Anything else?</p> <p>18 A These are things off the top of my</p> <p>19 head.</p> <p>20 Q When Maria's job as WMI administrator</p> <p>21 was eliminated were any of her duties given to</p> <p>22 anyone else?</p> <p>23 A I don't recall.</p> <p>24 Q So describe for me Maria's role when</p> <p>25 she was the manager of the inventory control</p>	<p style="text-align: right;">Page 96</p> <p>1 E. TOOHIGH</p> <p>2 she doesn't understand, she doesn't</p> <p>3 understand. You don't push her on that.</p> <p>4 MR. MOSER: If you keep on telling the</p> <p>5 witness that she doesn't understand --</p> <p>6 MS. CABRERA: I did not say that. I</p> <p>7 said you mischaracterized the testimony.</p> <p>8 That is what I said. It is on the record.</p> <p>9 I didn't say she didn't understand. I said</p> <p>10 you mischaracterized the testimony.</p> <p>11 MR. MOSER: I think we can read back</p> <p>12 what was said.</p> <p>13 MS. CABRERA: Absolutely.</p> <p>14 MR. MOSER: You are coaching the</p> <p>15 witness.</p> <p>16 MS. CABRERA: Absolutely not.</p> <p>17 MR. MOSER: Your objections are</p> <p>18 improper, and you know it.</p> <p>19 MS. CABRERA: I will make the</p> <p>20 objections that I think need to be made to</p> <p>21 rein you in.</p> <p>22 MR. MOSER: Regardless of whether they</p> <p>23 comport with the rules.</p> <p>24 MS. CABRERA: Yes, I think I am just</p> <p>25 fine with the rules, but if you want to</p>

24 (Pages 93 to 96)

October 25, 2022

<p style="text-align: right;">Page 97</p> <p>1 E. TOOHIGH</p> <p>2 challenge that I am happy to get on the</p> <p>3 phone with the court. We can do that,</p> <p>4 okay?</p> <p>5 MR. MOSER: Okay.</p> <p>6 MS. CABRERA: Let's do that if that's</p> <p>7 what you want to do.</p> <p>8 MR. MOSER: I don't see the need to</p> <p>9 bother the court.</p> <p>10 MS. CABRERA: Well, I need to do it</p> <p>11 because my objections are appropriate. I</p> <p>12 won't sit here and let you mischaracterize</p> <p>13 the testimony.</p> <p>14 MR. MOSER: Okay.</p> <p>15 Q So do you have any firsthand knowledge</p> <p>16 of what Maria's supervisory role was when she</p> <p>17 became WMI administrator?</p> <p>18 A Yes. She directed the work and</p> <p>19 assignments to the inventory control clerks. She</p> <p>20 worked alongside with the WMI manager which had</p> <p>21 more of an accounting background, but she</p> <p>22 researched and investigated all of the inventory</p> <p>23 discrepancies, and she did that by utilizing the</p> <p>24 inventory control clerks.</p> <p>25 Q So if she told an inventory control</p>	<p style="text-align: right;">Page 99</p> <p>1 E. TOOHIGH</p> <p>2 rectify that situation.</p> <p>3 Q What was Barry Finkelstein's role in</p> <p>4 that? Was he assigning them any work?</p> <p>5 A Not that I am aware of. Our work</p> <p>6 would have been directed by Maria.</p> <p>7 Q If Barry Finkelstein was not assigning</p> <p>8 any work to the inventory control clerks why would</p> <p>9 he need to be their manager?</p> <p>10 A As I said, he -- they reported it to</p> <p>11 him because he had the relationship with the</p> <p>12 union. He had the capability of making sure that</p> <p>13 things were documented with the union, and when it</p> <p>14 came to discipline and he had the staffing that if</p> <p>15 somebody wasn't able to come to work he would have</p> <p>16 somebody that was trained and ready to go in as a</p> <p>17 backup. Maria would not have these resources.</p> <p>18 Q So let's go through these briefly. He</p> <p>19 had a relationship with the union. That's one</p> <p>20 reason why the inventory control -- that he</p> <p>21 managed the inventory control clerks, is that</p> <p>22 correct?</p> <p>23 A It is a reason, yes.</p> <p>24 Q And what was the nature of his</p> <p>25 relationship with the union?</p>
<p style="text-align: right;">Page 98</p> <p>1 E. TOOHIGH</p> <p>2 clerk to do something and the inventory control</p> <p>3 clerk did not do their job correctly what was</p> <p>4 Maria supposed to do?</p> <p>5 A Bring it to Barry Finkelstein.</p> <p>6 Together they would write up the employee.</p> <p>7 Q If Maria was the one directing the</p> <p>8 inventory control clerks, or as they are now</p> <p>9 called cycle counters, what was Barry</p> <p>10 Finkelstein's role?</p> <p>11 A Barry was the manager of the -- I</p> <p>12 think, a warehouse supervisor. I don't recall his</p> <p>13 exact title. So he was responsible for overall</p> <p>14 operations in the warehouse including the movement</p> <p>15 of the product and the loading of the cases.</p> <p>16 Q But the inventory control clerks did</p> <p>17 not throw cases, correct?</p> <p>18 A No.</p> <p>19 Q Did they tie load or untie load?</p> <p>20 A No.</p> <p>21 Q What was their specific role?</p> <p>22 A Their specific role as far as I</p> <p>23 understood is to track down inventory</p> <p>24 discrepancies and determine if the inventory is</p> <p>25 misplaced, misclassified, lost, broken, and then</p>	<p style="text-align: right;">Page 100</p> <p>1 E. TOOHIGH</p> <p>2 A The business agent relationship. Any</p> <p>3 discipline you want to issue to a union employee</p> <p>4 needs to be negotiated and discussed with the</p> <p>5 union before it was actually issued.</p> <p>6 Q Um, so did union employees report to</p> <p>7 any managers other than Barry Finkelstein?</p> <p>8 A There were day shift, night shift, mid</p> <p>9 shift.</p> <p>10 Q Okay. So he had a relationship with</p> <p>11 the union, correct?</p> <p>12 A Yes.</p> <p>13 Q That was one reason. And the</p> <p>14 relationship was that he was -- he was the one</p> <p>15 designated to deal with the union if there were</p> <p>16 any disciplinary issues?</p> <p>17 A He worked along with the union shop</p> <p>18 stewards and Human Resources and the union</p> <p>19 business agents on any contract or work</p> <p>20 performance disputes.</p> <p>21 Q Who had been doing that before Barry</p> <p>22 Finkelstein was doing it?</p> <p>23 A For the inventory control clerks?</p> <p>24 Q Yes.</p> <p>25 A I don't believe it was getting done,</p>

25 (Pages 97 to 100)

October 25, 2022

<p style="text-align: right;">Page 101</p> <p>1 E. TOOHIH</p> <p>2 but I don't know.</p> <p>3 Q Well, somebody had disciplinary</p> <p>4 authority over these employees, correct?</p> <p>5 A Yes.</p> <p>6 Q Who had disciplinary authority over</p> <p>7 these employees before Barry Finkelstein took it</p> <p>8 over?</p> <p>9 A Maria, but she didn't have a</p> <p>10 relationship with the union.</p> <p>11 Q What do you mean by relationship?</p> <p>12 A What do you mean?</p> <p>13 Q She wasn't on good terms with them?</p> <p>14 MS. CABRERA: Objection.</p> <p>15 Q Or something else?</p> <p>16 MS. CABRERA: Objection to the form of</p> <p>17 the question.</p> <p>18 A In my opinion? A relationship is that</p> <p>19 you have a conversation with the union. You have</p> <p>20 conversations. You debate it. You show what the</p> <p>21 details -- you explain what your decision and your</p> <p>22 rationale was. You have a multiple conversation,</p> <p>23 and then the discipline is issued.</p> <p>24 Q Does relationship mean anything else</p> <p>25 to you in this particular context?</p>	<p style="text-align: right;">Page 103</p> <p>1 E. TOOHIH</p> <p>2 WMI administrator?</p> <p>3 A To the best of my knowledge it was</p> <p>4 mostly over time, or it did not get done.</p> <p>5 Q Well, did anyone ever fill in for</p> <p>6 Tatiana Herdocia when she was pregnant?</p> <p>7 A When was Tatiana pregnant?</p> <p>8 Q So do you know how the process was</p> <p>9 handled for filling in temporary vacancies before</p> <p>10 Maria became WMI administrator?</p> <p>11 A To the best of my recollection it was</p> <p>12 concerning because Maria would not get necessarily</p> <p>13 the support or help because there were other</p> <p>14 prioritizations?</p> <p>15 A Every manager has their own list of</p> <p>16 things that need to be accomplished in a day.</p> <p>17 Q Did Maria report to John Wilkinson?</p> <p>18 A To the best of my recollection.</p> <p>19 (At this time there was a short</p> <p>20 recess).</p> <p>21 Q Who did Barry Finkelstein report to?</p> <p>22 A I believe, John Wilkinson.</p> <p>23 Q Who did Maria report to?</p> <p>24 A John Wilkinson.</p> <p>25 Q Did John Wilkinson have the authority</p>
<p style="text-align: right;">Page 102</p> <p>1 E. TOOHIH</p> <p>2 A No.</p> <p>3 Q So Maria did not have a relationship</p> <p>4 with the union. Barry had a relationship with the</p> <p>5 union?</p> <p>6 A Barry had a lot more employees and</p> <p>7 more union shop stewards that reported to him so</p> <p>8 he had a relationship. He knew the process</p> <p>9 better.</p> <p>10 Q What was that process?</p> <p>11 A What I just outlined for you.</p> <p>12 Q So then the second reason why he</p> <p>13 became their manager was what?</p> <p>14 A I said he had the support staff to</p> <p>15 help when there was absenteeism or leaves of</p> <p>16 absences.</p> <p>17 Q What support staff would be used when</p> <p>18 one of the old inventory control clerks was out?</p> <p>19 A Somebody else in the warehouse who may</p> <p>20 have had the skill sets or actually had the</p> <p>21 ability to help track down or move cases for them.</p> <p>22 Q Would that have been a warehouse man?</p> <p>23 A Potentially yes.</p> <p>24 Q So how were temporary vacancies in</p> <p>25 Maria's department addressed before they became</p>	<p style="text-align: right;">Page 104</p> <p>1 E. TOOHIH</p> <p>2 to tell Barry Finkelstein that he should get some</p> <p>3 help for Maria?</p> <p>4 A I would assume so.</p> <p>5 Q And there was another -- a third</p> <p>6 reason why Maria had supervisory -- did not have</p> <p>7 disciplinary authority over her employees. Do we</p> <p>8 need to go back? Are there any other reasons why</p> <p>9 Maria's disciplinary authority other the inventory</p> <p>10 control clerks was given to Barry Finkelstein?</p> <p>11 A I think overall it was to use</p> <p>12 effective resources. Barry had skills in moving</p> <p>13 manual labor and negotiations and conversations</p> <p>14 with the union. Maria had expertise on inventory</p> <p>15 control, solving those problems, and directing the</p> <p>16 work that needed to get done.</p> <p>17 Q Anything else?</p> <p>18 A Not that I can think of.</p> <p>19 Q So when you say that Barry Finkelstein</p> <p>20 had expertise in moving manual labor, for how many</p> <p>21 years had Maria been -- for how many years had</p> <p>22 Maria had supervisory authority over the inventory</p> <p>23 control clerks?</p> <p>24 A I don't know.</p> <p>25 Q Was it more than ten years?</p>

26 (Pages 101 to 104)

October 25, 2022

Page 105	Page 107
<p>1 E. TOOHI</p> <p>2 A I don't know if Maria was with the</p> <p>3 company for ten years.</p> <p>4 Q Were there any problems with Maria's</p> <p>5 discipline or supervision of her employees?</p> <p>6 A Not that I know of.</p> <p>7 Q Who is responsible at Southern for</p> <p>8 classifying an individual as either exempt from</p> <p>9 overtime or not exempt from overtime? Who is</p> <p>10 responsible there?</p> <p>11 A That would be a corporate</p> <p>12 responsibility.</p> <p>13 Q When you say corporate --</p> <p>14 A Based on the job descriptions that</p> <p>15 were created and established.</p> <p>16 Q Who would determine that?</p> <p>17 A Corporate. I don't know.</p> <p>18 Q Someone from the corporate office?</p> <p>19 A Yes. The corporate office would</p> <p>20 define the job descriptions. All job descriptions</p> <p>21 and any new ones had to be sent to corporate for</p> <p>22 approval and going through FLSA standard to make</p> <p>23 sure they qualify for exempt or nonexempt.</p> <p>24 Q Do you have an understanding of what</p> <p>25 the role was between -- withdrawn. Do you have an</p>	<p>1 E. TOOHI</p> <p>2 had an impact on Maria's workload, do you think</p> <p>3 that factors into whether she should have been</p> <p>4 given disciplinary authority over them?</p> <p>5 A No.</p> <p>6 Q Describe for me how Maria supervised</p> <p>7 the cycle counters once she was made WMI</p> <p>8 administrator?</p> <p>9 A She assigned the work. She supervised</p> <p>10 the work to make sure it was done properly.</p> <p>11 Q Do you have any personal knowledge of</p> <p>12 what work was assigned by her?</p> <p>13 A Do you mean like the actual tasks?</p> <p>14 Q Correct.</p> <p>15 A I know what tasks were assigned, but I</p> <p>16 don't know any specific details. It is inventory</p> <p>17 discrepancies.</p> <p>18 Q Can you be more specific?</p> <p>19 A If the system says there is 100 cases</p> <p>20 of Tito's and somebody goes to that location and</p> <p>21 there are no cases of Tito's then that would be a</p> <p>22 discrepancy. Inventory control clerks would be</p> <p>23 dispatched to identify why there were 100 cases of</p> <p>24 Tito's not in the location that is indicated in</p> <p>25 this system.</p>
Page 106	Page 108
<p>1 E. TOOHI</p> <p>2 understanding of what the role of the cycle</p> <p>3 counters was when WMI was implemented?</p> <p>4 A I'm not sure of the question you are</p> <p>5 asking. What the difference was before and after?</p> <p>6 Q Yes.</p> <p>7 A I don't know the nuances.</p> <p>8 Q Are you aware of whether or not, how</p> <p>9 a cycle counter did their job would have an effect</p> <p>10 on Maria's workload?</p> <p>11 A I don't understand the question. Can</p> <p>12 you define that for me?</p> <p>13 Q Well, did the way in which the cycle</p> <p>14 counters do their job affect Maria's workload?</p> <p>15 A I don't -- I mean, I wouldn't be able</p> <p>16 to answer that question. WMI completely changed</p> <p>17 how everyone's roles were done based on automation</p> <p>18 and the new processes. Maria had a role in that</p> <p>19 in defining what inventory control would be doing,</p> <p>20 so --</p> <p>21 Q Do you know whether the way in which</p> <p>22 the cycle counters performed their job had an</p> <p>23 impact on Maria's workload?</p> <p>24 A No.</p> <p>25 Q If the way they performed their job</p>	<p>1 E. TOOHI</p> <p>2 Q That was their job?</p> <p>3 A That was a component of that job, yes.</p> <p>4 Q So the inventory control clerks were</p> <p>5 responsible for did you say Tito's?</p> <p>6 A That's a vodka. It was just an</p> <p>7 example. You asked me for an example so that was</p> <p>8 an example. It is, in fact, fiction.</p> <p>9 Q So the inventory control clerks, part</p> <p>10 of their job was if there is a discrepancy between</p> <p>11 what is physically in a location and what is shown</p> <p>12 in the system, to investigate it and find out why</p> <p>13 there is a discrepancy?</p> <p>14 A Yes.</p> <p>15 Q Did they do anything else?</p> <p>16 A I don't know. If there was a</p> <p>17 discrepancy and they found 100 cases of Jameson in</p> <p>18 the Tito's location they have to move the Jameson</p> <p>19 and then bring it to that exact location, fix it</p> <p>20 in the system, and continue to find the Tito's.</p> <p>21 Q What about Maria's job on a daily</p> <p>22 basis? What did that look like as WMI</p> <p>23 administrator?</p> <p>24 A I can't answer that.</p> <p>25 Q Did you ever supervise her?</p>

27 (Pages 105 to 108)

October 25, 2022

<p style="text-align: right;">Page 109</p> <p>1 E. TOOHIGH</p> <p>2 A Directly, no.</p> <p>3 Q How often did you see her while she</p> <p>4 was WMI administrator?</p> <p>5 A I couldn't answer that.</p> <p>6 Q Did you ever see her performing her</p> <p>7 job on a daily basis?</p> <p>8 A Not on a daily basis, no.</p> <p>9 Q Did you ever see her performing her</p> <p>10 job at all?</p> <p>11 A Yes.</p> <p>12 Q Describe for me what you saw.</p> <p>13 A I would be able to describe a person</p> <p>14 who was at a computer who was looking like they</p> <p>15 were busy and assigning work out to Tatiana, Ena,</p> <p>16 or to Justin, but I wouldn't be directly</p> <p>17 responsible for involved in any of that.</p> <p>18 Q At some point was her office taken</p> <p>19 away from her?</p> <p>20 A I believe everyone's office was taken</p> <p>21 aware and put into a centralized location in the</p> <p>22 middle of the warehouse for better observation of</p> <p>23 what was going on.</p> <p>24 Q Besides Maria whose office was taken</p> <p>25 away?</p>	<p style="text-align: right;">Page 111</p> <p>1 E. TOOHIGH</p> <p>2 Q But is it fair to say that Barry</p> <p>3 Finkelstein reported to John Wilkinson as did</p> <p>4 Maria?</p> <p>5 A Yes.</p> <p>6 Q And can you give me an example of any</p> <p>7 other individual at Southern who had ability to</p> <p>8 delegate work to other employees but did not have</p> <p>9 disciplinary authority over them?</p> <p>10 A I thought I answered that question</p> <p>11 already. Other positions in other areas of the</p> <p>12 company that also had, but I can't give you</p> <p>13 specifics without looking at a list of everyone's</p> <p>14 titles.</p> <p>15 Q You can't think of any as you sit</p> <p>16 here today?</p> <p>17 A No, that's a long way back.</p> <p>18 Q I am not talking about managing a</p> <p>19 function. I am talking about people who had the</p> <p>20 ability to delegate work to others but did not</p> <p>21 have disciplinary authority over them.</p> <p>22 MS. CABRERA: Objection.</p> <p>23 A Pricing managers gave work assignments</p> <p>24 to pricing coordinators, but they did not have the</p> <p>25 authority to discipline. Only the director had</p>
<p style="text-align: right;">Page 110</p> <p>1 E. TOOHIGH</p> <p>2 A I don't recall who else was in that</p> <p>3 area. They demolished it, and created different</p> <p>4 office space, but there were other people in</p> <p>5 there.</p> <p>6 Q Who besides Maria?</p> <p>7 A I can't recall any specific name.</p> <p>8 Q Do you know whether there was any</p> <p>9 individual besides Maria who lost their office?</p> <p>10 A There was definitely other people that</p> <p>11 lost their office. I just don't know their names.</p> <p>12 Q Do you have any personal knowledge of</p> <p>13 what the cycle counters were doing?</p> <p>14 A No, other than conversations that I</p> <p>15 had with them.</p> <p>16 Q Okay.</p> <p>17 A And in what research I did for the</p> <p>18 other complaint.</p> <p>19 Q Did Maria ever report to Barry</p> <p>20 Finkelstein?</p> <p>21 A I don't know.</p> <p>22 Q Was she basically coequal with Barry</p> <p>23 Finkelstein?</p> <p>24 A I don't know. I have to look at an</p> <p>25 organizational chart.</p>	<p style="text-align: right;">Page 112</p> <p>1 E. TOOHIGH</p> <p>2 the authorization to discipline so they directed</p> <p>3 the work, but they did not have any disciplinary</p> <p>4 responsibility.</p> <p>5 Q And why?</p> <p>6 A Why?</p> <p>7 Q Yes.</p> <p>8 A I don't know.</p> <p>9 Q So what work did pricing managers give</p> <p>10 pricing coordinators?</p> <p>11 A I don't want to sound snarky. They</p> <p>12 gave them the pricing. They had to look at and</p> <p>13 make pricing of the cases and what we were going</p> <p>14 to be selling it for versus what we paid for it.</p> <p>15 Q And who did the pricing coordinators</p> <p>16 -- who had disciplinary authority over the pricing</p> <p>17 coordinators?</p> <p>18 A The director did.</p> <p>19 Q The director of what?</p> <p>20 A I don't remember her actual title.</p> <p>21 Pricing was one of the components of what she</p> <p>22 had. She had pricing, compliance, and something</p> <p>23 else. I don't remember her exact title.</p> <p>24 Q She was in sales?</p> <p>25 A No.</p>

28 (Pages 109 to 112)

October 25, 2022

<p style="text-align: right;">Page 113</p> <p>1 E. TOOHIH</p> <p>2 Q Can you give me any ideas as to what</p> <p>3 her job title was other than director?</p> <p>4 A I believe it was director of pricing</p> <p>5 and compliance but --</p> <p>6 Q So pricing manager. Just to clarify</p> <p>7 this, the pricing managers gave out work to</p> <p>8 pricing coordinators?</p> <p>9 A Yes.</p> <p>10 Q But did not have disciplinary</p> <p>11 authority other than, correct?</p> <p>12 A Correct.</p> <p>13 Q Who did the pricing manager report to?</p> <p>14 A The pricing director.</p> <p>15 Q And the pricing coordinators also</p> <p>16 reported to the director?</p> <p>17 A Yes. To the best of my knowledge.</p> <p>18 Its been a long time. I have to see an org chart.</p> <p>19 Q Can you think of any other</p> <p>20 circumstance at Southern in which a manager who</p> <p>21 was delegating work to the employees had another</p> <p>22 manager who was -- at the same level that was</p> <p>23 responsible for those employees' discipline?</p> <p>24 MS. CABRERA: Objection.</p> <p>25 A (No answer).</p>	<p style="text-align: right;">Page 115</p> <p>1 E. TOOHIH</p> <p>2 A I gave you another example at Southern</p> <p>3 with the pricing. I can probably come up with</p> <p>4 others if I saw the org chart again. There was</p> <p>5 limited interactions with the union so if somebody</p> <p>6 had a relationship and was able to manage the</p> <p>7 labor and was able to do those things we would</p> <p>8 have these relationships stay there. So it</p> <p>9 doesn't matter. It was a direct reporting</p> <p>10 relationship so it was easily done. As a matter</p> <p>11 of fact, I do it in my current job too.</p> <p>12 Q Besides the pricing coordinator</p> <p>13 example can you give me any other examples of</p> <p>14 instances in which one manager delegated work and</p> <p>15 another manager had supervisory authority?</p> <p>16 A Not without seeing an org chart.</p> <p>17 Q If I showed you an organizational</p> <p>18 chart will that help you?</p> <p>19 A Potentially.</p> <p>20 Q I don't have an org chart right now.</p> <p>21 Did Maria Suarez ever report to Tonisha Durant?</p> <p>22 Are you aware of the claims that Maria Suarez is</p> <p>23 making in this lawsuit?</p> <p>24 A No, not really. I believe the lawsuit</p> <p>25 was filed after I left the company.</p>
<p style="text-align: right;">Page 114</p> <p>1 E. TOOHIH</p> <p>2 Q Do you want me to be clearer because</p> <p>3 she objected?</p> <p>4 A I was actually going to answer.</p> <p>5 Q So you have --</p> <p>6 MS. CABRERA: No, hold on. Well, go</p> <p>7 ahead. You can ask her the question, but I</p> <p>8 won't have you sit here and testify.</p> <p>9 You have Barry Finkelstein reporting</p> <p>10 to John Wilkinson, correct? And you also have</p> <p>11 Maria Suarez reporting to John Wilkinson, is that</p> <p>12 fair to say?</p> <p>13 A Yes.</p> <p>14 Q Maria delegated work to certain</p> <p>15 employees but doesn't have disciplinary authority</p> <p>16 over them?</p> <p>17 A (Nodding).</p> <p>18 Q Correct?</p> <p>19 A Yes.</p> <p>20 Q And then there is another manager that</p> <p>21 reports to her boss who has disciplinary authority</p> <p>22 over these individuals, correct?</p> <p>23 A Yes.</p> <p>24 Q Is there any other circumstance in</p> <p>25 which you saw this at Southern?</p>	<p style="text-align: right;">Page 116</p> <p>1 E. TOOHIH</p> <p>2 Q Okay. Have you ever seen any</p> <p>3 agreements with Southern Wine and Spirits?</p> <p>4 A Such as what?</p> <p>5 Q Any agreements.</p> <p>6 A I signed my employment letter. I</p> <p>7 signed a release letter. I signed a consultancy</p> <p>8 letter. I signed employment documents.</p> <p>9 Q Did you ever sign a nondisclosure</p> <p>10 agreement?</p> <p>11 A Yes.</p> <p>12 Q Now as the VP of Human Resources --</p> <p>13 withdrawn. In your entire career at Southern how</p> <p>14 many E.E.O.C. -- withdrawn. In your entire career</p> <p>15 at Southern how many claims of discrimination were</p> <p>16 made against the company?</p> <p>17 A Approximately? I wouldn't have any</p> <p>18 exact knowledge. I want to say five because I can</p> <p>19 remember two other than the three that you brought</p> <p>20 up here today.</p> <p>21 Q Did you have any role in the</p> <p>22 investigation into those claims?</p> <p>23 A Yes.</p> <p>24 Q What was your role?</p> <p>25 A In the other two I was lead</p>

29 (Pages 113 to 116)

October 25, 2022

<p style="text-align: right;">Page 117</p> <p>1 E. TOOHIGH</p> <p>2 investigator.</p> <p>3 Q In any of those instances did you ever</p> <p>4 come to the conclusion that the complaint was</p> <p>5 founded?</p> <p>6 A Through an EEO charge?</p> <p>7 Q No. You did your own investigation,</p> <p>8 correct?</p> <p>9 A Based off of the question of EEO</p> <p>10 charges being filed.</p> <p>11 Q Okay. I am not talking about EEO</p> <p>12 charges being filed. I am talking about any</p> <p>13 claims of discrimination. Not just EEO charges.</p> <p>14 A Even internal complaints?</p> <p>15 Q Yes.</p> <p>16 A Okay.</p> <p>17 Q So how many internal complaints were</p> <p>18 there of discrimination while you were at</p> <p>19 Southern?</p> <p>20 A I don't know.</p> <p>21 Q More than 20?</p> <p>22 A Less than 20, I think.</p> <p>23 Q Can you give me an approximation?</p> <p>24 A Maybe ten.</p> <p>25 Q And then there would be five EEO</p>	<p style="text-align: right;">Page 119</p> <p>1 E. TOOHIGH</p> <p>2 putting the name on there. Absolutely not.</p> <p>3 Q What was the nature of the</p> <p>4 allegation?</p> <p>5 A It was a sales manager, and the sales</p> <p>6 representative was complaining that she felt that</p> <p>7 she was being treated differently because she was</p> <p>8 the only female on the team.</p> <p>9 Q Can you be more specific?</p> <p>10 A Excluded out of events, felt like she</p> <p>11 had different work assignments than other sales</p> <p>12 reps were given.</p> <p>13 Q Did you make any recommendation?</p> <p>14 A Yes.</p> <p>15 Q What was your recommendation?</p> <p>16 A The sales manager was written up,</p> <p>17 went to training, and went to antiharassment</p> <p>18 training and a few other trainings to make sure</p> <p>19 that there was no bias or anything in the future</p> <p>20 management.</p> <p>21 Q Was anything paid to the employee?</p> <p>22 A No.</p> <p>23 Q Other than that particular instance</p> <p>24 were there any other claims of discrimination</p> <p>25 against the company that you thought were valid?</p>
<p style="text-align: right;">Page 118</p> <p>1 E. TOOHIGH</p> <p>2 charges in addition to those ten?</p> <p>3 A No. Five EEO charges would be part of</p> <p>4 those ten.</p> <p>5 Q Okay. And was part of your role</p> <p>6 determining whether or not the complaints of</p> <p>7 discrimination were valid or not?</p> <p>8 A Yes.</p> <p>9 Q Did you find any valid claims of</p> <p>10 discrimination when you were at Southern?</p> <p>11 A I am thinking about the cases. Yes.</p> <p>12 Q Which one?</p> <p>13 A Is that relevant to this? Can I give</p> <p>14 names?</p> <p>15 Q Absolutely. If she is going to say</p> <p>16 that she expressed an opinion that the company was</p> <p>17 discriminating against someone and that the</p> <p>18 complaint was founded, that's relevant.</p> <p>19 MS. CABRERA: Not the name of the</p> <p>20 person, no. The name of the person is not</p> <p>21 relevant. If you want to talk about the</p> <p>22 circumstances and so on and so forth I think</p> <p>23 that's fine, but we are not going to violate</p> <p>24 the privacy of perhaps an employee who is</p> <p>25 not subject or a party to this lawsuit by</p>	<p style="text-align: right;">Page 120</p> <p>1 E. TOOHIGH</p> <p>2 A No.</p> <p>3 Q Do you believe that Maria was</p> <p>4 retaliated against because the women in her</p> <p>5 department sued the company?</p> <p>6 A No.</p> <p>7 Q What is that opinion based upon?</p> <p>8 A I believe Maria did her responsibility</p> <p>9 by identifying an issue that we immediately</p> <p>10 corrected. I don't believe it was Maria's fault</p> <p>11 that Ena and Tatiana sued the company.</p> <p>12 Q How was the issue corrected?</p> <p>13 A It was a clerical error. The error</p> <p>14 was corrected in the system. Justin was</p> <p>15 classified the same way as Ena and Tatiana.</p> <p>16 Q Other than the instances that were</p> <p>17 brought directly to your attention, have you ever</p> <p>18 seen discrimination at Southern based upon race,</p> <p>19 or gender, or national origin?</p> <p>20 A No.</p> <p>21 Q If you look at Plaintiff's Exhibit 13</p> <p>22 I don't know if you have it in front of you. If</p> <p>23 you go to page 7 which is SGWS 001012 this policy</p> <p>24 on retaliation, I would like you to read it. I</p> <p>25 will have a question or two. You can read it to</p>


30 (Pages 117 to 120)

October 25, 2022

<p style="text-align: right;">Page 121</p> <p>1 E. TOOHIGH</p> <p>2 yourself.</p> <p>3 A Okay.</p> <p>4 Q Why is it important to have this</p> <p>5 policy?</p> <p>6 A You need to be able to file</p> <p>7 comfortable expressions, their views, and if they</p> <p>8 feel like they are not being treated respectfully</p> <p>9 for it to be investigated and either rectified or</p> <p>10 explanations.</p> <p>11 Q It talks about the open door policy</p> <p>12 here. Are you familiar with the open door policy?</p> <p>13 A Yes.</p> <p>14 Q Can you locate it in this handbook?</p> <p>15 It is on page 54 which is -- SGWS 001059. Is this</p> <p>16 the open door policy that the antiretaliation</p> <p>17 policy is referring to?</p> <p>18 A Yes.</p> <p>19 Q So do you have any personal</p> <p>20 understanding as to or knowledge as to Maria's</p> <p>21 supervisory responsibilities after she became WMI</p> <p>22 administrator?</p> <p>23 A I'm not sure what you mean by personal</p> <p>24 knowledge. Do I know overall what her job</p> <p>25 description said, or what her job responsibilities</p>	<p style="text-align: right;">Page 123</p> <p>1 E. TOOHIGH</p> <p>2 Maria have been an individual who would have</p> <p>3 interviewed them?</p> <p>4 A In my opinion, yes, but I don't know</p> <p>5 what happened.</p> <p>6 Q And do you know whether she had any</p> <p>7 say in who was hired for a particular -- for a</p> <p>8 cycle counter position?</p> <p>9 A I don't recall.</p> <p>10 Q You don't recall or you don't know?</p> <p>11 A I don't know who was hired, when they</p> <p>12 were hired, what the dates are.</p> <p>13 Q Were any cycle counters fired?</p> <p>14 A I don't know.</p> <p>15 Q Were any cycle counters disciplined</p> <p>16 for any reason?</p> <p>17 A I don't know.</p> <p>18 Q Did Maria have any ability to -- did</p> <p>19 she have any say in whether cycle counters should</p> <p>20 be disciplined or not?</p> <p>21 A If they are going be disciplined for</p> <p>22 performance related matters she would have to be</p> <p>23 consulted or they wouldn't know they were not</p> <p>24 doing that job.</p> <p>25 Q Is the answer --</p>
<p style="text-align: right;">Page 122</p> <p>1 E. TOOHIGH</p> <p>2 were, or did I actively manage her?</p> <p>3 Q Do you know what her job</p> <p>4 responsibilities were as a supervisor?</p> <p>5 A I understand it to be that she would</p> <p>6 look around, find the inventory discrepancies that</p> <p>7 were notified in WMI, and she would assign the</p> <p>8 work to the inventory control clerks for</p> <p>9 resolution. She would make sure that it got</p> <p>10 resolved so we can ship out the cases.</p> <p>11 Q Employment decisions that were made</p> <p>12 with regard to the cycle counters. So after Maria</p> <p>13 became WMI administrator who made these employment</p> <p>14 decisions?</p> <p>15 A Can you define employment decisions?</p> <p>16 Q Well, who hired cycle counters?</p> <p>17 A I don't know.</p> <p>18 Q Was Maria involved in the hiring of</p> <p>19 any cycle counters when she became WMI</p> <p>20 administrator?</p> <p>21 A I don't know if a new cycle counter</p> <p>22 was hired from the established team so I don't</p> <p>23 know.</p> <p>24 Q Do you know what the procedure would</p> <p>25 have been if a cycle counter was needed would</p>	<p style="text-align: right;">Page 124</p> <p>1 E. TOOHIGH</p> <p>2 A If they were disciplined I would</p> <p>3 sayyes, she would have a say.</p> <p>4 Q And did Southern take her</p> <p>5 recommendations into account?</p> <p>6 A I don't know.</p> <p>7 Q I am almost done. So let's look at</p> <p>8 Exhibit 12 and if you can please go to SGWS 00265.</p> <p>9 If you look at the bottom it says here during an</p> <p>10 audit by our outside auditor Maria was absent, and</p> <p>11 one of her subordinates had her accounts audited.</p> <p>12 The accounts were not accurate and they needed to</p> <p>13 be corrected by the IC manager and the auditor.</p> <p>14 Do you know who the IC manager was?</p> <p>15 A No.</p> <p>16 Q When Maria was informed of this she</p> <p>17 insisted that her counter was accurate and she not</p> <p>18 be disciplined.</p> <p>19 A Maria had no proof of accuracy and did</p> <p>20 not want to have her cycle counter disciplined.</p> <p>21 She did not want to hold the cycle counter</p> <p>22 accountable.</p> <p>23 Q Who was this cycle counter?</p> <p>24 A I don't know.</p> <p>25 Q Was this cycle counter, in fact,</p>

31 (Pages 121 to 124)

October 25, 2022

Page 125		Page 127	
1	E. TOO HIG	1	CERTIFICATION
2	disciplined?	2	
3	A I don't know.	3	
4	MR. MOSER: I have no further	4	I, David P. Yuni, a Shorthand Reporter
5	questions.	5	and Notary Public in and for the State of New
6	(Time noted: 2:20 p.m.)	6	York, do hereby certify:
7		7	That the testimony of said witness was
8		8	held before me at the aforesaid time and place.
9	ELIZABETH TOO HIG	9	That said witness was duly sworn before the
10		10	commencement of the testimony and that the
11	Subscribed and sworn to before me on	11	testimony was taken stenographically by me and
12	This ____ day of _____, 2022.	12	is a true and accurate transcript of my
13		13	stenographic notes.
14		14	I further certify that I am not related
15	Notary Public	15	to any of the parties to the action by blood
16		16	or marriage and that I am in no way
17		17	interested in the outcome of this Matter.
18		18	IN WITNESS WHEREOF, I have hereunto set my
19		19	hand this 3rd day of November 2022.
20		20	
21		21	
22		22	
23		23	
24		24	
25		25	David P. Yuni

Page 126		Page 128	
1	E X H I B I T S	1	ERRATA SHEET FOR: ELIZABETH TOO HIG
2		2	ELIZABETH TOO HIG, being duly sworn, deposes and
3	PLAINTIFF'S DESCRIPTION PAGE	3	says: I have reviewed the transcript of my
4		4	proceeding taken on 10/25/2022. The following
5	8 HANDBOOK 18	5	changes are necessary to correct my testimony.
6		6	
7	9 CONFIDENTIAL LEASE AND 23	7	PAGE LINE CHANGE REASON
8	SEVERANCE AGREEMENT	8	----- ----- -----
9	10 COMPLAINT 41	9	----- ----- -----
10	11 FEMALE APPLICANT SHEET 49	10	----- ----- -----
11	12 EMPLOYER'S POSITION STATEMENT 52	11	----- ----- -----
12	13 EMPLOYEE HANDBOOK 76	12	----- ----- -----
13		13	----- ----- -----
14		14	----- ----- -----
15		15	----- ----- -----
16		16	----- ----- -----
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21		21	Witness Signature: _____
22		22	Subscribed and sworn to, before me
23		23	this ____ day of _____, 20 ____.
24		24	_____ (NOTARY PUBLIC) MY COMMISSION EXPIRES
25		25	

32 (Pages 125 to 128)

October 25, 2022

[Page 129]

A				
a.m (1)	124:19	85:24	17:8 27:24	47:17 51:5
1:12	accurate (10)	administrato...	28:18	57:2,6 60:22
abilities (1)	70:5,20 71:10	10:16 28:22,23	AGREED (3)	69:23 71:20
83:18	75:9 88:17	29:5 62:25	3:2,8,13	73:4,10 79:4
ability (7)	90:5 91:24	63:7 64:2,8	agreement (6)	82:19 83:4
82:24 83:16	124:12,17	71:12,18	23:24 25:5,7	90:9,19 93:5
85:24 102:21	127:12	72:14 73:3	46:15 116:10	93:21 95:20
111:7,20	accurately (5)	74:2,25 78:11	126:8	106:16
123:18	5:9 55:23	78:18 80:23	agreements (4)	108:24 109:5
able (12)	71:16,17	80:25 81:5,15	25:15 26:3	113:25 114:4
48:3 87:13	73:15	82:4 83:2	116:3,5	123:25
89:18 93:14	achieve (1)	86:6,11 87:5	ahead (3)	answered (8)
93:17 94:15	75:5	87:19 88:4,9	49:21 68:22	29:13 36:11
99:15 106:15	acquisition (2)	89:13 90:4,13	114:7	37:13 71:20
109:13 115:6	9:21 10:14	92:19,23	allegation (1)	73:10 80:19
115:7 121:6	act (1)	93:11 94:20	119:4	88:17 111:10
absence (2)	74:25	95:2,16 97:17	allegations (1)	answering (1)
55:19 56:9	action (2)	103:2,10	45:24	73:13
absences (2)	94:12 127:15	107:8 108:23	alongside (1)	antiharassm...
55:16 102:16	actions (1)	109:4 121:22	97:20	119:17
absent (1)	11:18	122:13,20	ambiguity (1)	antiretaliatio...
124:10	actively (2)	administrato...	84:18	121:16
absenteeism ...	6:5 122:2	73:16 75:9	America (1)	anybody (1)
89:17,19	actual (5)	administrato...	42:9	56:4
102:15	28:17 74:2	73:22	analysis (3)	apologize (2)
Absolutely (4)	77:14 107:13	adopt (1)	38:5 88:13	8:19 59:22
96:13,16	112:20	61:7	89:3	apparently (2)
118:15 119:2	addition (1)	advancing (1)	analytical (1)	24:18 50:8
accidentally ...	118:2	84:20	83:22	appear (3)
46:7	additional (2)	affect (1)	analyze (1)	24:6 50:6 76:8
accomplishe...	23:15 30:22	106:14	75:4	appeared (1)
103:16	additions (1)	aforesaid (1)	ANJANETT...	45:19
account (1)	78:7	127:8	2:11	appears (7)
124:5	address (1)	against- (1)	announced (1)	25:3,10 50:15
accountable ...	4:10	1:6	14:17	58:11,19 67:4
124:22	addressed (1)	age (1)	annual (9)	83:5
accountale (1)	102:25	27:2	51:16,17,19,24	applicant (3)
74:14	admin (1)	agent (1)	52:9 53:16	49:24 65:2
accounting (1)	10:17	100:2	55:12 56:17	126:10
97:21	administer (1)	agents (1)	59:18	applicants (1)
accounts (2)	3:16	100:19	answer (29)	50:16
124:11,12	administrati...	ages (1)	4:20 29:13	application (1)
accuracy (1)	72:16 83:13	28:14	37:15 43:5	76:2
	administrati...	ago (3)	44:6 46:17	applied (5)

October 25, 2022

[Page 130]

14:18 47:7 49:10 50:16 50:18 apply (3) 19:5 65:7 78:10 appraisal (13) 54:13 55:3 57:9 59:18,19 60:13 61:24 79:19 81:3,14 81:21 85:20 86:9 appraisals (7) 54:5,10 55:6 57:13 76:22 77:15 81:18 appropriate ... 46:8 97:11 approval (5) 36:14 67:7,20 68:8 105:22 approve (10) 32:22 33:7,8 36:5,9 63:18 67:14,19 68:10,21 approved (10) 34:22 38:7 65:4 67:9,10 67:17,18 68:2 68:15,25 approving (9) 33:13,13 35:16 35:21 68:4,14 69:4,7,14 approximate... 5:6 10:25 21:20 23:17 approximate... 5:22 7:7,12 8:11,13,22,23 9:9,10,11,12 10:5 15:3,4	116:17 approximati... 117:23 April (5) 53:8 59:2,5 80:10 81:11 area (9) 6:12,16,17 8:6 12:16 20:9,19 27:16 110:3 areas (3) 64:13 94:6 111:11 argue (2) 93:3,4 aside (1) 56:8 asked (15) 29:12 37:12 43:8 44:23 45:7,8 71:19 73:5,18,18,19 82:20,22 90:2 108:7 asking (5) 29:4 73:12 95:21,24 106:5 assess (1) 55:23 assign (1) 122:7 assigned (4) 88:15 107:9,12 107:15 assigning (3) 99:4,7 109:15 assignments ... 97:19 111:23 119:11 assist (1) 75:3 associated (1) 70:19	assume (6) 28:7 35:4,25 36:16 66:24 104:4 assuming (1) 77:23 assumption (1) 36:2 attached (2) 61:14 65:4 attendance (1) 89:8 attention (6) 45:13,19 58:9 70:12 79:17 120:17 attorney (3) 4:14 35:13,18 attorneys (3) 2:4,9 3:3 audit (1) 124:10 audited (1) 124:11 auditor (2) 124:10,13 authority (18) 36:9 92:10,19 101:4,6 103:25 104:7 104:9,22 107:4 111:9 111:21,25 112:16 113:11 114:15,21 115:15 authorizatio... 112:2 authorized (1) 3:15 automation (3) 33:21 64:11 106:17	Avenue (1) 2:9 aware (10) 42:17,21,24 48:21 57:20 57:24 99:5 106:8 109:21 115:22 <hr/> B <hr/> B (2) 4:2 126:1 back (12) 14:19 21:6 34:21 49:5 54:12 73:7,8 79:15 86:18 96:11 104:8 111:17 background ... 97:21 backup (1) 99:17 bad (1) 93:6 bargaining (1) 46:14 Barry (23) 89:10,12,22 94:8 98:5,9 98:11 99:3,7 100:7,21 101:7 102:4,6 103:21 104:2 104:10,12,19 110:19,22 111:2 114:9 based (22) 28:7,10 40:12 40:16 50:22 52:13 53:13 59:3,4 64:11 80:20 82:24 83:8,16 85:23	86:9 90:19 105:14 106:17 117:9 120:7,18 basically (2) 88:13 110:22 basis (5) 72:2 84:16 108:22 109:7 109:8 Bate (7) 18:20,21 24:8 24:18 41:13 50:5 52:24 bear (1) 41:13 bearing (2) 24:7,18 becoming (1) 9:4 begins (1) 69:11 behalf (2) 66:24 94:13 believe (24) 11:8 13:8,11 19:22 20:6 24:12 28:21 43:19 44:12 49:6 55:10 56:4 64:10 65:20 78:16 87:23 100:25 103:22 109:20 113:4 115:24 120:3 120:8,10 beneath (1) 85:22 benefits (1) 10:15 best (21) 20:17 32:11,16 33:14 34:15
--	--	--	---	---

October 25, 2022

[Page 131]

39:3 40:5 45:12 51:25 54:3,17,23 68:3 74:19 78:3,6 94:10 103:3,11,18 113:17 Beth (1) 67:13 better (3) 40:10 102:9 109:22 bias (1) 119:19 blood (1) 127:15 boroughs (1) 6:19 boss (1) 114:21 bother (1) 97:9 bottom (2) 67:6 124:9 break (1) 53:18 bridging (1) 84:19 brief (2) 83:5 84:8 briefly (1) 99:18 bring (3) 90:8 98:5 108:19 bringing (1) 45:18 broad (1) 46:11 Broadhollow... 1:10 broken (1) 98:25 Brooklyn (5)	7:3,6,8 12:25 14:24 BROOKS (1) 2:8 brought (5) 17:11 20:18 45:13 116:19 120:17 budgeted (1) 68:19 building (5) 74:5,6,10,12 74:14 bunch (1) 72:10 business (13) 5:17 12:9 19:16 30:20 33:4 39:4,6 39:16,20,23 91:18 100:2 100:19 busy (1) 109:15 button (1) 69:2 <hr/> C <hr/> C (1) 2:2 CABRERA (...) 2:11 24:3,16 28:25 29:12 32:23 37:12 37:15 39:18 41:11 43:2 46:13,16 47:16 48:19 49:19 50:3,20 51:4 56:19 57:5 58:2 60:20 69:22 70:8 71:3,19 73:17 77:9	80:15 82:11 83:3 84:4,7 90:6 93:2,24 95:18,25 96:6 96:13,16,19 96:24 97:6,10 101:14,16 111:22 113:24 114:6 118:19 calendar (1) 52:13 call (3) 7:10 58:13 91:20 called (3) 5:14 94:13 98:9 calling (1) 95:9 candidate (1) 75:3 capabilities (5) 74:5,10,13,14 87:12 capabilitiy (1) 99:12 capability (1) 74:7 capacity (1) 12:12 career (2) 116:13,14 case (17) 24:11,19,20,21 30:20 32:3,10 33:4,4 35:14 37:5 41:15,20 41:22 46:20 50:7,10 cases (10) 98:15,17 102:21 107:19,21,23	108:17 112:13 118:11 122:10 cats (1) 51:21 cause (1) 39:22 center (1) 91:20 centralized (1) 109:21 centric (1) 95:5 certain (3) 31:11 49:16 114:14 CERTIFICA... 127:1 certify (2) 127:6,14 cetera (1) 34:11 chain (1) 72:21 challenge (2) 32:22 97:2 challenged (1) 34:22 challenges (1) 95:8 change (2) 84:19 128:7 changed (3) 55:21 62:8 106:16 changes (1) 128:5 charge (4) 40:22,24 51:11 117:6 charges (5) 117:10,12,13 118:2,3	Charles (1) 17:25 chart (6) 110:25 113:18 115:4,16,18 115:20 check (1) 52:4 circumstanc... 113:20 114:24 circumstanc... 33:17 118:22 City (1) 6:18 claim (1) 44:2 claimed (2) 44:17 48:22 claims (8) 42:19 49:2 115:22 116:15,22 117:13 118:9 119:24 clarification ... 73:6 clarified (1) 43:22 clarify (6) 14:20 68:6 70:10 86:12 90:14 113:6 classification... 47:2,10,13 48:16,23 classification... 28:17 29:3 44:24 46:11 classified (8) 43:18 44:25 45:2,4,11,20 87:20 120:15 classifying (1) 105:8
---	---	---	--	---

October 25, 2022

[Page 132]

clear (2) 73:19,21	comes (2) 46:19 56:14	complaining ... 119:6	70:19 71:25	contract (1) 100:19
clearer (1) 114:2	comfortable ... 121:7	complaint (11) 41:3,8 42:8,13	conducted (1) 51:20	control (34) 82:25 83:8,17
clearly (2) 72:25 73:24	coming (3) 64:12 85:3	43:8,14,16	23:23 25:5,14	84:21 85:9
clerical (7) 29:20 43:19	89:2	110:18 117:4	26:2 126:7	86:10,16,25
44:25 46:5,8	commencem... 127:10	118:18 126:9	configure (1) 75:4	87:9 88:6,15
46:21 120:13	comments (3) 70:13 84:23,25	complaints (4) 46:10 117:14	confirm (2) 68:18,18	89:24 94:9,25
clerk (3) 88:15 98:2,3	commercial (...) 19:17 29:15,21	117:17 118:6	connection (1) 50:10	95:15 97:19
clerks (19) 88:7 89:24	29:23	complete (1) 90:7	consequence... 55:5,9,10	97:24,25 98:2
94:9 95:2,15	COMMISSI... 128:25	completed (1) 60:7	consider (1) 56:2	98:8,16 99:8
97:19,24 98:8	communicat... 35:9,12	completely (2) 50:10 106:16	considered (5) 33:20 39:7	99:20,21
98:16 99:8,21	communicat... 37:21 38:6	completion (2) 52:3,9	40:2 51:2	100:23
100:23	54:20	compliance (3) 66:4 112:22	78:18	102:18
102:18	communicati... 85:7	113:5	considering (1) 76:10	104:10,15,23
104:10,23	communicati... 54:24 61:8	component (1) 108:3	CONSTAN... 2:8	106:19
107:22 108:4	comp (1) 43:19	components ... 31:19 112:21	construed (1) 70:17	107:22 108:4
108:9 122:8	company (17) 5:14 8:17 14:8	comport (1) 96:23	consultancy ... 116:7	108:9 122:8
clicking (1) 68:25	19:23 21:12	computer (1) 109:14	consultant (2) 6:6 61:21	controlled (1) 88:12
closer (2) 11:5 52:6	25:4 52:11	concept (1) 73:25	consulted (1) 123:23	conversation... 34:25 43:13,15
coaching (1) 96:14	57:3 58:8	concern (4) 16:11 43:17	contained (1) 15:17	101:19,22
coded (1) 46:7	105:3 111:12	47:15 49:8	contains (1) 58:5	conversation... 21:15,22,25
coequal (1) 110:22	115:25	concerned (1) 17:7	context (1) 101:25	43:11 63:24
collective (1) 46:14	116:16	concerning (2) 34:9 103:12	continue (2) 84:5 108:20	64:6 68:23
column (1) 26:24	118:16	concerns (5) 18:10,10 23:16	continues (2) 50:11 95:19	79:7 94:12
combination ... 84:16	119:25 120:5	44:10 73:11	continuous (1) 80:3	101:20
come (11) 19:17 20:22	120:11	conclusion (1) 117:4		104:13
21:5,8 34:21	compared (1) 63:14	conditions (2)		110:14
57:11 66:2	compensatio... 70:23			conversion (1) 95:13
78:7 99:15	compiled (1) 34:8			convert (2) 86:23 87:8
115:3 117:4				Cooper (3) 12:4,13 13:10
				coordinator ... 86:15 87:2
				coordinators... 111:24 112:10
				112:15,17
				113:8,15
				copy (2)

October 25, 2022

[Page 133]

24:15,24 Corey (3) 12:3,13 13:10 corporate (12) 13:14 14:17 15:12 19:14 19:19 64:10 105:11,13,17 105:18,19,21 corrdrinator (...) 115:12 correct (44) 8:5,16 26:24 27:9 37:23 47:22 49:14 49:18 50:19 58:21 59:12 59:23,25 60:2 60:5,6 68:8 78:21 79:10 79:13,20 81:19,22,23 82:2 84:2,24 84:25 88:18 92:20 93:7,9 98:17 99:22 100:11 101:4 107:14 113:11,12 114:10,18,22 117:8 128:5 corrected (4) 120:10,12,14 124:13 correctly (2) 88:7 98:3 cost (7) 22:9,11,14 27:11 29:9 32:14 39:20 costs (1) 20:24 counsel (4) 16:17,19 24:3	50:9 counter (9) 106:9 122:21 122:25 123:8 124:17,20,21 124:23,25 counters (13) 85:8 98:9 106:3,14,22 107:7 110:13 122:12,16,19 123:13,15,19 country (1) 75:19 couple (1) 16:2 course (1) 47:25 court (8) 1:2 3:18 42:6 73:9 81:10 86:20 97:3,9 cover (3) 60:25 81:24 89:19 covered (5) 27:17 59:14,25 60:5 79:19 covers (2) 60:24 79:22 Crane (3) 20:6,8,18 create (3) 66:10,18 95:13 created (12) 14:15 62:2 65:16,18 66:3 66:4,7,20 67:2 94:6 105:15 110:3 creating (1) 65:22 criteria (1) 78:17	current (7) 4:10 74:18,20 76:19 78:25 87:11 115:11 currently (4) 13:9 33:18 87:9,14 customarily ... 25:21 26:2 cut (1) 65:21 cycle (21) 85:7 98:9 106:2,9,13,22 107:7 110:13 122:12,16,19 122:21,25 123:8,13,15 123:19 124:20,21,23 124:25 <hr/> D <hr/> D (1) 78:9 daily (4) 84:15 108:21 109:7,8 data (1) 49:10 date (16) 5:21 10:25 18:14 24:2 41:5 50:2 52:22 54:5,7 57:17 58:20 59:10,12 61:3 77:4,25 dated (2) 19:3 81:18 dates (5) 8:11 58:25 80:11,21 123:12	David (3) 4:3 127:4,25 day (7) 6:3 61:20 100:8 103:16 125:12 127:19 128:23 day-to-day (2) 12:8 74:3 days (1) 65:3 deadline (2) 52:6,8 deal (1) 100:15 debate (1) 101:20 December (11) 6:5,8 7:6 8:16 8:17,23,23 9:9,10,11 61:20 decided (1) 22:21 decision (11) 22:21 30:24 40:12,15 62:24 63:4,6 63:9,14 77:6 101:21 decisions (7) 21:23 70:6,21 71:22 122:11 122:14,15 defendant (3) 1:20 2:9 24:9 Defendants (1) 1:9 define (5) 34:4 92:7 105:20 106:12 122:15	defined (1) 94:7 defining (1) 106:19 definitely (1) 110:10 definition (1) 91:24 delegate (2) 111:8,20 delegated (2) 114:14 115:14 delegating (1) 113:21 Delivery (1) 18:9 demographic... 23:8 31:18 33:17 34:9 demolished (1) 110:3 demonstrate... 83:18,23 85:13 department (...) 10:4 18:9 23:12,13 35:3 35:7,11,12 44:5,18,22 46:6 67:11 68:17 74:15 102:25 120:5 departments... 35:6 85:8 Depending (1) 52:5 depends (1) 90:18 deposed (11) 16:2,5,11,13 16:15,19,25 17:10,12,15 18:19 deposes (1) 128:2
---	--	---	--	--

October 25, 2022

[Page 134]

deposition (3) 3:14 13:18 90:3	Develop (1) 72:7	5:16 6:10 7:19 8:2,15,20,24	108:13,17	52:17,23,25
depositions (1) 17:6	developing (1) 74:13	9:4,6 11:23 111:25	discriminate... 44:19,22	58:4,7,10
describe (12) 31:10 54:12 55:9 63:10 71:16,17 73:15 88:11 94:24 107:6 109:12,13	development... 14:10 15:7 70:23	112:18,19 113:3,4,14,16	discriminati... 118:17	61:16,17 62:2 64:20,22 65:2 65:9 66:16
described (1) 73:25	difference (2) 44:23 106:5	disapproved ... 34:22	discriminati... 17:11,18,22 42:19 43:23	82:23 83:15 84:8
description (...) 64:9 65:15 69:8,11,11,16 70:4,5,16,24 71:7 72:6 73:23 74:24 75:9,20 87:23 91:23 94:5 121:25 126:3	different (12) 11:5 16:18 24:19 48:14 50:10 52:11 72:10 73:18 73:19 77:25 110:3 119:11	disapproving... 35:16,21	116:15 117:13,18 118:7,10 119:24 120:18	documentati... 37:18,20 38:2 38:18
descriptions ... 31:14 65:5 75:18 105:14 105:20,20	difficult (3) 85:7 95:5,23	disciplinary ... 11:18 18:11 92:10,19 94:11 100:16 101:3,6 104:7 104:9 107:4 111:9,21 112:3,16 113:10 114:15,21	discriminato... 49:12	documented ... 33:10 36:19,22 37:11,16 38:9 99:13
designated (1) 100:15	differently (4) 45:5,11,20 119:7	discipline (9) 88:21 93:17 99:14 100:3 101:23 105:5 111:25 112:2 113:23	discussed (1) 100:4	documents (...) 18:23 21:4 22:8 23:17 25:22 34:16 34:17 38:12 39:13 41:18 41:25 50:8 52:18 59:3 65:4 76:12,14 80:20 116:8
designed (1) 87:13	difficulty (1) 62:14	disciplined (8) 88:22 123:15 123:20,21 124:2,18,20 125:2	disparate (3) 31:20,22 33:6	doing (13) 12:12 32:7 69:21 74:2 87:9,14,15 88:24 100:21 100:22 106:19 110:13 123:24
designs (1) 72:8	Dina (14) 10:7,18 42:22 42:23,25 43:3 43:7,12 44:10 65:16 66:9,17 66:23 75:23	disputes (1) 100:20	dispatched (2) 7:9 107:23	dollars (1) 23:4
details (4) 65:6 68:21 101:21 107:16	direct (6) 25:6 88:5 89:4 92:8 93:14 115:9	disqualified (...) 49:17	disputes (1) 100:20	door (4) 12:18 121:11 121:12,16
determine (3) 70:25 98:24 105:16	directed (6) 30:21 88:2,23 97:18 99:6 112:2	disqualify (1) 47:6	disqualified (...) 49:17	draw (3) 58:9 70:11 79:17
determined (3) 61:8 93:19,22	directing (3) 94:4 98:7 104:15	discovery (4) 24:7,21 41:22 42:2	disqualify (1) 47:6	drivers (1) 29:19
determining ... 118:6	directly (3) 109:2,16 120:17	disciplines (1) 89:21	distribution ... 29:19	drivers' (1)
	director (17)	disciplining (...) 89:7	District (4) 1:2,3 42:6,7	
		discrepancie... 88:14,18 97:23 98:24 107:17 122:6	diversity (2) 48:11,14	
		discrepancy ... 107:22 108:10	divided (1) 33:22	
			document (32) 18:25 24:6,19 25:11,17 26:14 33:12 39:10 41:8,18 42:3,16 50:6 50:14,15	

October 25, 2022

[Page 135]

18:9	45:1 46:1	35:2 37:6	elements (4)	78:16 98:6
due (6)	47:1 48:1	E.E.O.C (1)	70:6,21 71:13	100:3 118:24
33:21 54:5	49:1 50:1	116:14	71:22	119:21
55:2 58:24	51:1 52:1	earlier (4)	eligibility (3)	126:12
59:4 61:3	53:1 54:1	15:20 77:25	78:9,10 79:9	employee's (1)
duly (3)	55:1 56:1	78:2 80:10	eligible (1)	33:16
4:3 127:9	57:1 58:1	early (1)	77:12	employees (35)
128:2	59:1 60:1	82:10	eliminate (3)	6:23 7:5,11
duplicated (1)	61:1 62:1	earning (3)	36:14 40:12,15	11:16 15:2,7
75:25	63:1 64:1	20:22 22:11,14	eliminated (6)	23:6 25:22
duplication (2)	65:1 66:1	easier (1)	22:2 31:17	26:3 31:18
65:18 66:21	67:1 68:1	68:25	38:19 39:21	42:18 45:19
Durant (1)	69:1 70:1	easily (1)	94:21 95:12	46:22 47:24
115:21	71:1 72:1	115:10	eliminating (2)	53:10,21 62:6
duties (8)	73:1 74:1	East (1)	21:23 51:2	65:6 70:7
9:14 18:7	75:1 76:1	2:5	elimination (...)	75:15 87:25
71:18 73:16	77:1 78:1	Eastern (2)	30:19 31:2,8	88:3 91:2
73:22 83:8	79:1 80:1	1:3 42:6	31:12,24,25	92:6,8,20
94:21 95:16	81:1 82:1	EEO (7)	32:12,14,18	100:6 101:4,7
duty (1)	83:1 84:1	31:19 117:6,9	33:2,9 34:3	102:6 104:7
15:25	85:1 86:1	117:11,13,25	34:14 35:17	105:5 111:8
	87:1 88:1	118:3	36:5,10 38:14	113:21
E	89:1 90:1	EEOC (2)	38:22 39:6,8	114:15
E (128)	91:1 92:1	40:22,23	50:25	employees' (2)
2:1,2,2 4:1,2,2	93:1 94:1	effect (6)	Elizabeth (5)	70:22 113:23
5:1 6:1 7:1	95:1 96:1	3:17 22:11	1:20 4:9 125:9	employer (1)
8:1 9:1 10:1	97:1 98:1	77:22 78:4	128:1,2	5:24
11:1 12:1	99:1 100:1	89:4 106:9	else's (1)	employer's (2)
13:1 14:1	101:1 102:1	effective (3)	66:7	52:20 126:11
15:1 16:1	103:1 104:1	84:14 88:24	emerging (2)	employment ...
17:1 18:1	105:1 106:1	104:12	74:18,21	14:10 15:7
19:1 20:1	107:1 108:1	efficiencies (2)	employed (10)	28:3 49:10
21:1 22:1	109:1 110:1	39:25 74:15	5:11,13 6:5 7:7	116:6,8
23:1 24:1	111:1 112:1	efficiency (1)	10:22 16:24	122:11,13,15
25:1 26:1	113:1 114:1	40:4	16:25 46:24	Ena (13)
27:1 28:1	115:1 116:1	efforts (2)	47:19 82:18	40:19,21 42:10
29:1 30:1	117:1 118:1	70:18 71:25	employee (23)	43:18,24 44:7
31:1 32:1	119:1 120:1	either (9)	15:14,17 18:4	44:24 45:7,10
33:1 34:1	121:1 122:1	24:8,22 26:9	19:2,5 34:9	45:21 109:15
35:1 36:1	123:1 124:1	32:21 33:7	51:16 55:13	120:11,15
37:1 38:1	125:1 126:1	34:21 65:3	55:18,20	ended (1)
39:1 40:1	E-mail (2)	105:8 121:9	56:12 68:23	9:8
41:1 42:1	36:16 42:25	electronic (1)	69:19,20 77:2	entail (1)
43:1 44:1	E-mails (2)	62:9	77:19,21	29:23

October 25, 2022

[Page 136]

entire (9) 6:14 12:18 27:19 33:10 84:8 86:13,22 116:13,14	11:16 51:8,20 51:24 52:9 53:7 55:8 59:3 62:7 77:8	Exhibit (33) 18:13,16 23:22 23:25 24:4,17 25:2 26:17,19 28:24 29:6 41:2,4,7,12 49:25 50:4 52:21 53:4 57:16 58:4 60:15,17 62:18,20 64:19 76:25 77:3,19 79:16 79:18 120:21 124:8	65:7 <hr/> F <hr/> facilities (4) 7:2 12:23 14:21 53:22 facility (15) 6:24 7:3,4,6,8 7:12,17 12:20 13:2 47:14,20 48:2 53:11 56:12 57:14 fact (4) 44:14 108:8 115:11 124:25 factor (2) 39:7 50:24 factors (4) 30:24 38:25 39:25 107:3 failed (1) 94:16 fair (4) 50:23 57:23 111:2 114:12 fairly (1) 52:6 familiar (3) 19:8 40:18 121:12 far (1) 98:22 fault (1) 120:10 favoritism (2) 40:6,13 February (3) 58:25 59:5 81:11 FEDERAL (1) 3:1 feel (1) 121:8	felt (2) 119:6,10 female (7) 42:18 47:9 48:9 49:24 50:15 119:8 126:10 females (3) 44:21 46:25 47:6 fiction (1) 108:8 figure (1) 72:5 file (5) 40:22 61:8 77:12 78:15 121:6 filed (6) 40:19 42:13 43:8 115:25 117:10,12 files (1) 77:14 filing (3) 3:4 42:5,7 fill (1) 103:5 filled (2) 33:15 76:3 filling (1) 103:9 find (6) 49:4 94:15 108:12,20 118:9 122:6 fine (2) 96:25 118:23 finish (1) 80:16 Finkelstein (...) 89:10,13,23 98:5 99:7 100:7,22
entry (1) 65:10 environment... 92:16,18 equal (1) 21:14 ERRATA (1) 128:1 error (3) 46:5 120:13,13 especially (1) 82:17 ESQ (2) 2:6,11 established (4) 78:19 82:3 105:15 122:22 establishing ... 14:14 estimate (2) 47:21 53:24 et (1) 34:11 evaluated (8) 72:3 79:25 82:24 83:6,7 83:15 85:23 86:2 evaluation (20) 52:13 54:23 55:12 56:11 56:18 58:11 58:18,24 59:7 59:9,24 60:4 60:18,24 80:6 81:6 82:8,9 82:14,16 evaluations (...)	events (1) 119:10 everyone's (3) 106:17 109:20 111:13 exact (5) 91:22 98:13 108:19 112:23 116:18 exactly (3) 10:23 42:14 94:7 EXAMINAT... 1:18 4:7 examined (1) 4:5 example (8) 84:6 91:5 108:7,7,8 111:6 115:2 115:13 examples (2) 85:12 115:13 exchanged (7) 24:7,13,14,20 41:14,16,25 Excluded (1) 119:10 executed (1) 12:11 execution (2) 9:16,19 exempt (7) 87:20,24 92:3 94:3 105:8,9 105:23 exhaustive (2) 70:17 71:24	expectations ... 69:25 expense (2) 21:16 22:3 expenses (5) 19:15,20,25 20:16 21:11 expertise (2) 104:14,20 EXPIRES (1) 128:25 explain (6) 9:18 67:7 79:22 81:13 81:16 101:21 explanations... 121:10 expressed (1) 118:16 expressions (1) 121:7 extent (1) 24:13 extenuating (...) 33:17 external (3) 30:23 35:18 74:24 externals (1)		

October 25, 2022

[Page 137]

101:7 103:21 104:2,10,19 110:20,23 111:3 114:9 Finkelstein's... 94:8 98:10 99:3 fired (1) 123:13 FIRM (1) 2:4 first (9) 4:2 18:20 59:7 59:10 67:5 80:24 81:3 82:8 85:15 firsthand (1) 97:15 five (26) 8:10 13:8 14:24 28:4 29:8 30:5,9 30:12,15 34:5 36:5,9,15,20 36:23 37:7,10 37:18 38:21 39:8,16 40:12 40:16 116:18 117:25 118:3 fix (1) 108:19 flawed (1) 40:11 Florida (2) 13:13,16 FLSA (1) 105:22 FMLA (1) 94:14 focus (1) 93:12 follow (3) 54:9 57:4 68:13	followed (5) 17:22 37:7 60:5 63:23 69:4 following (2) 64:12 128:4 follows (1) 4:6 force (1) 3:16 forgot (1) 12:2 form (14) 3:9 32:23 39:18 43:2 46:13,16 57:5 60:20 69:22 70:8 71:3 77:9 83:4 101:16 former (1) 18:4 forth (1) 118:22 forward (3) 33:7,19 50:13 found (3) 31:21 59:8 108:17 founded (2) 117:5 118:18 four (2) 17:5 28:4 frame (4) 10:11 22:13 50:17 59:2 frames (1) 52:11 front (3) 67:4 80:8 120:22 function (8) 64:10 90:23 91:6,12,17,19	91:21 111:19 functional (1) 74:25 functions (3) 75:5 92:3,6 further (4) 3:8,13 125:4 127:14 future (2) 87:15 119:19 <hr/> G <hr/> G (2) 4:2 20:20 gender (2) 48:13 120:19 general (7) 12:15 13:3 20:2,5,8 67:22 69:24 generalist (6) 10:20,21,24 18:6,8 91:19 generalists (3) 10:16 26:7,10 generate (1) 52:3 generated (2) 22:8 23:18 geographic (4) 6:11 8:6 20:9 27:16 getting (5) 10:12 52:6 87:2 88:25 100:25 give (13) 34:5 62:24 63:6 77:6 91:5,23 111:6 111:12 112:9 113:2 115:13 117:23 118:13	given (11) 22:4,5,6 56:17 62:21 76:6 79:12 94:21 104:10 107:4 119:12 gives (2) 69:24 75:11 Glazer's (10) 1:7,19 4:16 6:2 6:4 13:19,20 14:5 15:8 25:4 Glazier's (1) 23:13 go (23) 14:19 21:3 22:16,22 28:6 28:10,20 29:8 29:11 30:2,6 30:9,16 33:7 49:20 54:12 67:19 99:16 99:18 104:8 114:6 120:23 124:8 goal (1) 20:15 goals (3) 85:14,20 86:8 goes (2) 61:10 107:20 going (34) 4:17 18:15,17 21:5 23:4 25:22 26:4,13 30:22 31:15 33:19 41:6,11 41:17,21 52:23 56:6,23 59:6 64:18 68:24 70:11 86:14 87:15 88:21 89:18	93:4 105:22 109:23 112:13 114:4 118:15,23 123:21 good (8) 4:13 52:18 55:11,15 75:11 78:16 83:22 101:13 Goodrich (8) 12:2,6,10 13:3 67:14,20,21 68:2 Goodrich's (1) 12:14 grade (1) 19:22 guess (5) 7:18 14:6 66:12,14,15 guidance (1) 43:9 guide (1) 70:25 <hr/> H <hr/> H (3) 4:2,2 126:1 hand (2) 16:4 127:19 handbook (10) 18:12 19:2,5 77:2,19,21 78:4 121:14 126:5,12 handbooks (3) 15:7,14,18 handful (1) 16:20 handle (2) 86:3 89:15 handled (2) 89:12 103:9
--	--	---	--	---

October 25, 2022

[Page 138]

happen (3) 31:21 34:20 86:14	66:13 77:17 122:18	25:2 41:4,7 50:2 52:22 57:17 64:20 77:4 79:17	indicated (2) 78:15 107:24	insisted (1) 124:17
happened (1) 123:5	history (1) 76:18	identify (1) 107:23	indicates (1) 66:25	instance (1) 119:23
happening (2) 33:19 34:10	hold (5) 8:11 9:9 16:4 114:6 124:21	identifying (1) 120:9	indicating (1) 65:12	instances (3) 115:14 117:3 120:16
happy (1) 97:2	holding (1) 74:13	immediately ... 120:9	individual (13) 17:24 30:17 32:2 34:14 48:7 76:21 91:16 92:11 93:8 105:8 110:9 111:7 123:2	instructions ... 19:20
hard (2) 19:16 57:8	home (2) 11:6,7	impact (6) 39:4,5,15,22 106:23 107:2	insure (1) 75:6	intended (8) 70:16,20 71:14 71:15,16,17 71:23 72:2
head (3) 56:15 92:14 94:19	honestly (3) 8:13 17:14 52:10	implement (1) 72:7	intense (1) 21:21	intensive (1) 95:11
headquarter... 14:17 15:12	housing (1) 85:8	implementat... 85:10 86:13,17 86:22 87:4,16	individuals (...) 7:7 10:6,9 22:15 28:6,10 30:9,12,15,25 31:7,12 32:13 33:2,23,24 34:2,6 36:5,9 36:15,20,23 37:8,11,18 38:21 39:2,8 39:16 40:12 40:16 44:18 48:5 53:25 67:12 90:24 92:2,5 114:22	interacting (1) 72:21
held (1) 127:8	HR (19) 7:20 8:16,20 9:16,19 11:11 12:3,11,12 13:11 14:9,20 14:21 17:19 48:2 54:14 67:17 77:11 91:18	implemented... 106:3	important (2) 48:11 121:4	interactions ... 115:5
help (5) 102:15,21 103:13 104:3 115:18	human (16) 5:16 6:10 8:2,4 8:9,24 9:5,6,8 9:15 11:24 17:16 51:11 62:5 100:18 116:12	implementin... 14:16 15:16	improper (1) 96:18	interested (1) 127:17
helped (1) 88:18	Huntington (1) 2:5	improvement... 72:20	industry (1) 16:21	internal (4) 16:17,19 117:14,17
herding (1) 51:21		in-house (3) 35:6,10,11	influencing (1) 30:24	Interview (1) 63:13
Herdocia (6) 40:19,21 42:10 44:8 45:21 103:6		Ina (1) 44:2	information ... 23:7,14 33:16 34:8,9,23	interviewed (...) 63:12 76:17 123:3
hereunto (1) 127:18		inappropriate... 43:4 45:18	informed (1) 124:16	inventories (1) 83:24
high (1) 48:4		include (7) 6:17,20,23 12:20,22 20:11 48:13	infrequencie... 93:13	inventory (46) 72:22 82:25 83:8,16,19 84:21 85:9 86:10,16,23 86:25 87:9,10 88:6,14,18 89:3,23 94:9 94:25 95:6,14
higher (1) 93:18	I	included (1) 74:4	initiative (2) 27:11 29:9	
hired (11) 46:6,25 47:10 47:25 48:8 76:9 122:16 122:22 123:7 123:11,12	IC (2) 124:13,14	including (1) 98:14	inquiry (1) 45:9	
hiring (6) 11:13,14 49:12	idea (1) 30:2	indicate (1) 73:2		
	ideas (2) 84:20 113:2			
	identificatio... 18:13,17 23:25			

October 25, 2022

[Page 139]

97:19,22,24 97:25 98:2,8 98:16,23,24 99:8,20,21 100:23 102:18 104:9 104:14,22 106:19 107:16,22 108:4,9 122:6 122:8 investigated (1) 43:22 investigate (3) 43:9 88:15 108:12 investigated ... 88:16 97:22 121:9 investigation... 45:23 46:3,4 48:25 116:22 117:7 investigator ... 117:2 investigatory... 16:13,15 involve (1) 29:18 involved (10) 30:8,15 35:15 35:19,20 62:23 63:2,8 109:17 122:18 Island (3) 6:18 14:23 20:12 issue (3) 100:3 120:9,12 issued (9) 60:19 61:24 80:6,13 81:14 81:19 82:10	100:5 101:23 issues (2) 94:12 100:16 <hr/> J <hr/> J (6) 2:6 60:15,18 62:18,20 79:18 Jameson (2) 108:17,18 January (1) 65:11 Jean (1) 17:25 Jersey (3) 6:19 7:14 20:12 job (74) 6:9 11:5,9 26:24 28:7,16 29:2 31:13,14 50:25 64:9 65:5,15,20 66:3,7 67:10 69:8,10,11,15 70:4,5,6,7,19 70:21,22,24 71:2,7,13,17 71:21,22 72:6 73:2,22 75:18 75:20 76:18 76:19 77:6 78:14,24 79:24 82:25 83:16 87:23 91:3,22 93:12 94:5,20 98:3 105:14,20,20 106:9,14,22 106:25 108:2 108:3,10,21 109:7,10 113:3 115:11	121:24,25 122:3 123:24 jobs (1) 67:25 John (11) 80:3 84:24 85:2 90:2 103:17,22,24 103:25 111:3 114:10,11 Josienne (1) 43:25 July (2) 19:3 83:19 jump (1) 89:19 June (1) 61:9 Jury (1) 15:25 justifications... 23:5 justified (2) 33:4 43:24 Justin (6) 43:20 44:25 45:20 46:5 109:16 120:14 <hr/> K <hr/> keep (3) 51:22,23 96:4 keeping (2) 38:16,17 Keith (1) 35:15 kept (2) 22:20,24 Kevin (8) 20:3 21:12 31:5,6,11 33:25 66:13 67:13	key (1) 69:17 kind (2) 95:5,11 knew (3) 68:22,24 102:8 know (114) 4:20 10:23 13:9 16:6 17:24 21:10 26:9 27:13,16 27:19,22 28:9 28:19 29:3 30:14 32:9,17 35:19,20,24 36:3,18 37:5 38:12 39:25 42:14,15 43:4 44:14 45:10 46:18,19 47:3 47:5 48:6,7 48:10,20 50:17 52:12 54:22 56:22 57:20 58:4,7 60:7,9,12 61:15 62:2,16 62:17,20 64:17 65:19 65:24 66:2,17 66:20,23 74:17,20,21 74:22 75:20 75:23 78:7,23 79:2,5,6 80:5 82:17 87:20 88:23 90:18 91:22 94:7 96:18 101:2 103:8 104:24 105:2,6,17 106:7,21 107:15,16 108:16 110:8	110:11,21,24 112:8 117:20 120:22 121:24 122:3 122:17,21,23 122:24 123:4 123:6,10,11 123:14,17,23 124:6,14,24 125:3 knowing (1) 50:21 knowledge (...) 15:13 24:21 28:11 34:15 40:5 56:7 68:16 78:4,6 95:3 97:15 103:3 107:11 110:12 113:17 116:18 121:20,24 known (3) 13:22 14:3 48:18 knows (1) 69:20 Kohn (6) 31:6,11 32:18 33:25 36:18 67:13 <hr/> L <hr/> L (1) 4:2 labor (5) 9:22 95:11 104:13,20 115:7 language (1) 65:13 large (1) 95:5
--	---	--	--	---

October 25, 2022

[Page 140]

Larry (9) 12:2,6,9,14 13:2 67:14,20 67:21 68:2	10:15 55:16,19 56:9 61:19 94:14	54:25 67:6 128:7	28:18 111:17 113:18	21:21,22,22 95:10
launch (3) 54:19 58:13,18	leaves (1) 102:15	list (9) 23:6 26:21 27:14 28:14 34:5 70:17 71:24 103:15 111:13	longer (6) 19:9,13 31:17 33:20 39:23 58:8	loud (1) 71:8
launched (1) 53:8	leaving (1) 68:23	listed (6) 28:23 29:5 66:13 67:13 76:8 79:10	look (32) 9:7 16:21 19:16 26:22 31:18,19 56:23 57:16 58:3 59:9,23 60:14,17 61:3 65:8 67:5 70:12 74:5,23 78:9 79:15,16 85:13,23 91:22 108:22 110:24 112:12 120:21 122:6 124:7,9	M
launches (1) 58:14	led (1) 21:11	LLC (2) 1:8,20		main (3) 2:5 10:17 13:14
Lauren (1) 35:25	left (3) 8:17 61:18 115:25	LLP (1) 2:8		major (1) 86:22
LAW (1) 2:4	left-hand (1) 26:23	load (2) 98:19,19		making (12) 17:17,20 22:21 30:23 42:19 51:19 70:6,21 71:22 72:20 99:12 115:23
lawsuit (11) 4:15 16:14 17:11 18:18 18:19 40:18 57:21,24 115:23,24 118:25	legal (20) 23:9,10,12,13 26:20 27:23 33:5 34:18 35:3,5,7,10 35:11 36:2,4 36:8,11,14 38:2,4	loading (1) 98:15		male (4) 47:14 48:17,23 49:7
lawsuits (2) 16:8,12	legitimate (1) 45:22	local (5) 75:8,13,14,16 75:19	looked (5) 49:9 75:25 76:18,19,22	man (1) 102:22
layoffs (1) 11:20	let's (6) 14:19 16:23 54:12 97:6 99:18 124:7	locate (1) 121:14	looking (12) 24:9 27:25 29:15 51:15 53:5 72:12,18 85:18,19 91:4 109:14 111:13	manage (7) 87:25 91:11,11 92:6,8 115:6 122:2
lead (2) 84:18 116:25	letter (4) 43:20 116:6,7 116:8	located (1) 6:21		managed (3) 72:23 92:5 99:21
leader (2) 68:17 80:3	letting (1) 30:5	location (11) 13:6 15:8 20:12 75:15 75:17 107:20 107:24 108:11,18,19 109:21		management... 9:22 18:10 66:5 74:4 79:8 95:15 119:20
leaders (2) 20:19 54:22	level (2) 94:3 113:22	looks (3) 28:4 61:7 65:17		manager (52) 12:15 13:3 20:2,5,8 44:17 55:6 66:13 67:22 73:5,12 77:17 82:25 83:9,17 84:21 86:10 86:16 87:2,10 88:22 89:6,23
leadership (6) 20:18 31:3 67:11,18 75:7 75:13	lightly (1) 21:24	loss (1) 20:21		
learn (1) 19:24	limited (1) 115:5	lost (3) 98:25 110:9,11		
learned (1) 20:15	Linden (7) 7:4,12,14 12:20,25 14:24 20:11	lot (6) 21:24 23:19 55:7 91:2 95:8 102:6		
learning (1) 9:23	line (3)	lots (4)		
lease (2) 23:23 126:7				
leave (6)				

October 25, 2022

[Page 141]

90:12,16,17	35:21 38:13	107:2 108:21	20:22 27:7	12:2
90:21,22,23	42:15,18	120:10	65:14,19,20	minutes (2)
91:6,17,19	44:12,13,16	121:20	74:17,20	84:10,10
92:12 94:25	44:21,23 45:3	Mark (3)	90:21	mischaracte...
95:14,17	45:6,13,14,18	23:21 40:25	measured (1)	96:10
97:20 98:11	56:17 58:5,12	76:24	72:23	mischaracter...
99:9 102:13	58:19,23 60:8	marked (15)	meet (1)	90:7
103:15 113:6	60:14 61:9	18:12,16 23:24	78:9	mischaracter...
113:13,20,22	62:21,24 63:6	24:4,25 41:3	meeting (3)	95:19 97:12
114:20	63:20,21,25	41:6 49:25	20:18 21:2	mischaracter...
115:14,15	70:25 71:11	50:4 52:16,21	78:24	96:7
119:5,16	73:4,11,11,14	58:3 64:19	meetings (3)	mischaracter...
124:13,14	73:19 76:6,9	77:3,18	21:3,22 83:23	82:12 93:25
managerial (1)	77:6 78:9,23	marketing (3)	Melville (1)	misclassified...
93:23	80:13,21,22	29:24 30:3	1:10	98:25
managers (12)	82:18,23	91:10	members (1)	misplaced (1)
57:4,13 85:8,9	83:11 84:12	marriage (1)	35:3	98:25
90:17,24	84:18 85:6	127:16	memories (1)	mixed (1)
91:21 92:3	86:15 87:19	Martin (2)	19:10	72:7
100:7 111:23	90:3,12 91:7	20:6,8	memory (3)	Mm-hmm (2)
112:9 113:7	91:8,15,25	matter (3)	19:12 32:10	59:11 85:21
managing (4)	92:19 94:16	115:9,10	39:3	money (1)
84:14 87:10	95:4 98:4,7	127:17	men (1)	30:6
94:9 111:18	99:6,17 101:9	matters (3)	47:19	months (5)
Manhattan (1)	102:3 103:10	16:13,16	merger (1)	56:5 78:14
75:2	103:12,17,23	123:22	14:5	80:2 81:3,5
manual (3)	104:3,6,14,21	mature (1)	Merrick (1)	Moody (1)
79:10 104:13	104:22 105:2	10:17	4:11	35:25
104:20	106:18 107:6	Meadowbro...	met (4)	morning (1)
manually (1)	109:24 110:6	4:11	76:11 78:12,17	4:13
87:9	110:9,19	mean (25)	79:9	Moser (24)
March (5)	111:4 114:11	8:22 9:12,19	metro (2)	2:4,6 4:7,13,14
6:6 58:25 59:5	114:14	12:6 13:18	6:16,17	23:21 24:12
80:10 81:11	115:21,22	19:10 23:11	MHE (2)	24:23 40:25
Margolis (9)	120:3,8	27:6,10 55:20	74:18,21	49:22 52:16
10:7,18 42:22	122:12,18	59:14 61:6	mid (1)	73:7 76:24
43:12 44:11	123:2,18	70:23 75:12	100:8	81:8 86:18
65:16 66:18	124:10,16,19	76:6 89:16	middle (1)	96:4,11,14,17
66:23 75:23	Maria's (17)	91:13 92:9,11	109:22	96:22 97:5,8
Maria (108)	50:24,25 71:17	101:11,12,24	mine (2)	97:14 125:4
1:4 4:15 19:6,9	85:2 94:20,24	106:15	4:19 18:4	move (2)
19:12 25:9,17	97:16 102:25	107:13	minimum (1)	102:21 108:18
26:11 28:5,13	104:9 105:4	121:23	78:12	movement (1)
30:12 32:18	106:10,14,23	means (8)	minute (1)	98:14

October 25, 2022

[Page 142]

moving (3) 50:13 104:12 104:20 multiple (1) 101:22	negotiated (1) 100:4 negotiations ... 104:13 new (52) 1:3,8,10,19,23 2:5,10,10 4:5 4:11,16 6:13 6:14,18,19 7:14 8:7 9:17 11:12 12:10 12:17,18 13:2 13:19 14:25 20:10,11,13 27:20 42:7 55:16,20 56:3 56:9 64:11 66:5 67:24,25 75:15,17 78:7 84:20 86:17 86:24,24 87:11,12 93:10 105:21 106:18 122:21 127:5	note (4) 24:5,17 41:12 41:21 noted (1) 125:6 notes (3) 23:19 63:13 127:13 notice (1) 42:5 notified (1) 122:7 November (1) 127:19 nuances (1) 106:7 number (9) 21:5,7 22:5,6 22:19 24:4,17 41:13 50:5 numbers (2) 23:3 24:18	73:17 77:9 80:15 82:11 90:6 93:2,24 95:18,25 101:14,16 111:22 113:24 objections (4) 3:9 96:17,20 97:11 objectives (1) 75:6 observation (...) 109:22 occasions (4) 5:4 16:18 21:18 32:9 October (1) 1:11 offered (2) 63:16 76:2 office (10) 13:12,14 105:18,19 109:18,20,24 110:4,9,11 officer (1) 3:15 offices (1) 6:21 official (1) 61:20 Oh (1) 31:6 okay (35) 4:23 8:15 13:22 24:12 27:6 28:5,13 32:11 36:13 37:2 41:10 43:10 45:17 53:21 58:20 59:22 62:15 66:17 71:6	72:11 78:8 83:25 85:5 92:2,14 97:4 97:5,14 100:10 110:16 116:2 117:11,16 118:5 121:3 okjections (1) 50:12 old (1) 102:18 once (2) 17:3 107:7 one-third (1) 26:23 ones (1) 105:21 ongoing (1) 41:22 open (4) 54:19 121:11 121:12,16 operate (1) 75:4 operating (9) 19:15,20,25 20:16,24 21:11,16 22:3 22:10 operational (4) 19:18 31:3 39:24 40:4 operationall... 11:25 12:5,7 operations (1... 19:17 29:10,15 29:17 30:6 39:23 72:18 75:5 91:15 98:14 opinion (9) 72:25 73:14,21 75:8 77:5
N (1) 2:2 name (12) 4:8 12:2 13:23 17:24 25:7 31:6 43:20 44:3 110:7 118:19,20 119:2 names (2) 110:11 118:14 national (1) 120:19 nature (2) 99:24 119:3 necessarily (3) 28:17 92:13 103:12 necessary (4) 4:22 31:17 33:21 128:5 need (12) 21:10 49:5 56:22 84:9,15 96:20 97:8,10 99:9 103:16 104:8 121:6 needed (9) 12:10 21:6 54:23 55:2 88:25 93:15 104:16 122:25 124:12 needs (3) 67:10 94:5 100:4	night (1) 100:8 Nine (1) 10:5 Nodding (1) 114:17 nondisclosur... 116:9 nonexempt (1) 105:23 nonunion (5) 53:20,21,23 55:13 56:12 normally (3) 63:17 80:9,13 Notary (5) 1:22 4:4 125:15 127:5 128:25	O (2) 4:2,2 oath (3) 3:16 4:25 49:13 object (1) 83:3 objected (2) 37:14 114:3 objection (35) 28:25 29:12 32:23 37:12 39:18 43:2,6 46:13,16 47:16 48:19 49:19 50:20 51:4 56:19 57:5 58:2 60:20 69:22 70:8 71:3,19	73:17 77:9 80:15 82:11 90:6 93:2,24 95:18,25 101:14,16 111:22 113:24 objections (4) 3:9 96:17,20 97:11 objectives (1) 75:6 observation (...) 109:22 occasions (4) 5:4 16:18 21:18 32:9 October (1) 1:11 offered (2) 63:16 76:2 office (10) 13:12,14 105:18,19 109:18,20,24 110:4,9,11 officer (1) 3:15 offices (1) 6:21 official (1) 61:20 Oh (1) 31:6 okay (35) 4:23 8:15 13:22 24:12 27:6 28:5,13 32:11 36:13 37:2 41:10 43:10 45:17 53:21 58:20 59:22 62:15 66:17 71:6	

October 25, 2022

[Page 143]

101:18	104:11	37:3 41:19	84:15 85:24	36:12 43:7
118:16 120:7	121:24	60:15 61:22	performance...	77:5,12
123:4	oversee (1)	69:7 76:15	9:22,23 11:15	109:13
opportunity ...	75:4	79:18 84:21	38:23 40:8,16	118:20,20
11:5,9 77:13	overtime (4)	85:18 86:25	50:24,25 51:8	personal (5)
oppose (3)	87:21,24 105:9	87:16 93:10	51:16,19,24	28:11 107:11
31:24,25 32:12	105:9	108:9 118:3,5	52:9,12 53:6	110:12
option (1)	overview (4)	particular (23)	53:16 54:4,10	121:19,23
32:21	69:25 75:11	6:11 8:6 12:16	54:13 55:3,6	personally (1)
options (1)	83:5 84:9	32:3,10,14	55:12,24	9:24
32:25	owners (1)	34:2 39:6	56:11,18 57:9	perspective (1)
order (6)	19:23	49:17 55:22	57:12 58:5,18	12:3
1:21 55:2,3	<hr/>	59:24 65:15	58:24 59:2,7	phone (1)
67:15 89:20	P	66:3,18 68:5	59:9,17,18,24	97:3
91:23	P (5)	69:10 81:17	60:4,13,18,24	physical (1)
org (4)	2:2,2 4:3 127:4	91:6 93:19,22	61:24 62:6	83:24
113:18 115:4	127:25	101:25	70:7,22 71:23	physically (1)
115:16,20	P.C (1)	119:23 123:7	76:18,22 77:7	108:11
organization...	2:4	parties (2)	77:14 78:20	piece (1)
12:9	p.m (2)	3:4 127:15	79:8,19 80:6	67:3
organization...	65:11 125:6	partner (2)	80:24 81:2,14	place (1)
110:25 115:17	page (25)	5:17 91:18	81:17,18,21	127:8
organized (2)	18:20,21 25:6	party (1)	82:8,9,14,16	plaintiff (4)
83:11 84:13	25:7 26:22	118:25	85:3,14,20	1:5,21 2:4 24:8
origin (1)	52:24 53:5	pasted (1)	86:7 100:20	Plaintiff's (19)
120:19	58:16,17,19	65:21	123:22	18:13,16 23:21
originally (2)	59:10,20	pay (1)	performance...	23:25 25:2
31:7 75:21	61:14 65:9,10	19:22	78:15	40:25 41:4,7
othersaw (1)	67:5 83:21	people (20)	performed (6)	49:25 52:21
18:10	84:12 85:6,15	7:16 10:3 22:2	38:4 45:23	53:4 57:16
outcome (3)	85:16 120:23	22:4 27:13	53:7 55:13	64:19 76:24
46:2,4 127:17	121:15 126:3	28:2 29:8,11	106:22,25	77:3,19 79:16
Outline (1)	128:7	30:2,6 63:12	performing (3)	120:21 126:3
69:17	pages (1)	90:22,25 91:9	70:25 109:6,9	plan (3)
outlined (1)	26:13	91:11,20,21	period (12)	19:24 22:11
102:11	paid (2)	110:4,10	9:7 10:24	61:7
outside (1)	112:14 119:21	111:19	16:23 47:25	planning (2)
124:10	paper (2)	peoples' (1)	50:22 54:20	9:21,22
overall (14)	67:3 95:4	21:24	59:14,25	plans (1)
23:3 39:4,5	paperwork (2)	percent (9)	60:23 79:20	84:13
43:13,14,15	80:7,12	47:14 48:17,23	79:23 81:24	please (3)
43:16 63:22	part (20)	49:7 74:6,7	permanent (1)	4:19 26:14
69:24 73:24	22:3 25:13,20	85:20 86:8,8	94:14	124:8
74:15 98:13	29:9 32:14	perform (2)	person (7)	point (6)

October 25, 2022

[Page 144]

6:15 37:17 42:14,17 68:10 109:18 policies (6) 14:10,15,18 15:17 17:18 17:21 policy (17) 14:16 38:16,17 51:7,10,13,15 57:4 60:4 62:4 76:15 120:23 121:5 121:11,12,16 121:17 posed (1) 65:21 position (49) 33:18,19,20 34:10,11 39:7 47:7 48:4,8 49:17 50:19 51:3 52:20 53:14 56:7 62:25 63:7,11 63:15 64:2 65:5 66:11,18 67:2 69:18 70:16 75:10 76:2,7,11 78:11,13,14 78:25 79:12 80:23 81:4,6 81:15 82:4,15 84:22 85:25 86:3,6,15 87:5 123:8 126:11 positions (9) 23:4 38:18 39:21,22 49:11 50:16 63:16 68:15 111:11	possession (1) 50:9 posted (5) 63:12 65:3,6 67:10 78:13 posting (1) 69:24 Potentially (3) 75:24 102:23 115:19 practice (2) 62:4 77:11 practices (2) 49:12 74:19 precedes (1) 78:3 pregnant (2) 103:6,7 Premiere (1) 14:7 prepare (5) 25:11,14 34:13 34:17 61:15 prepared (5) 26:19 37:22 56:11 58:8 61:17 preparing (1) 26:16 preped (1) 83:24 presented (1) 23:14 previous (1) 81:4 previously (3) 13:22 64:19 65:21 pricing (19) 111:23,24 112:9,10,12 112:13,15,16 112:21,22 113:4,6,7,8	113:13,14,15 115:3,12 primarily (3) 11:13 17:17,20 principal (4) 70:6,21 71:10 71:21 printout (1) 64:25 prior (8) 8:2 10:22 14:5 14:6 18:19 83:12 85:3 87:2 prioritizatio... 103:14 privacy (1) 118:24 probably (4) 5:7 9:12 52:6 115:3 problems (3) 84:19 104:15 105:4 procedure (4) 14:16 54:9 76:15 122:24 procedures (3) 14:11,15,18 proceeding (1) 128:4 process (35) 18:11 21:21 22:21,25 23:18 33:10 33:12 37:3,7 52:2 53:20 54:13,15,18 54:19 57:9 61:22 62:10 63:3,8,10,13 63:19,22 64:21,23 65:4 68:4,13 69:3	69:7 74:3 102:8,10 103:8 processed (1) 89:21 processes (2) 84:15 106:18 produced (1) 18:18 product (1) 98:15 profile (1) 65:5 profit (1) 20:21 profits (1) 20:22 program (1) 32:15 programs (1) 54:21 project (4) 75:6 86:13,21 86:22 projects (1) 72:8 promoted (1) 9:13 proof (1) 124:19 properly (1) 107:10 PROPHETE... 2:8 proposed (1) 34:2 provide (6) 24:15,23 25:17 25:21 34:24 60:11 provided (7) 26:2,10 36:24 59:8,18,19 64:14	providing (2) 75:7,12 Public (5) 1:22 4:4 125:15 127:5 128:25 pulled (1) 75:24 purchased (1) 14:7 purpose (1) 69:15 purposes (2) 13:17 43:18 pursuant (1) 1:21 push (1) 96:3 put (5) 22:11 23:5 27:23 50:11 109:21 puts (1) 57:8 putting (1) 119:2 <hr/> Q qualification... 76:11 78:12 qualified (1) 63:15 qualify (2) 70:2 105:23 quantities (1) 95:6 Queens (1) 11:8 question (52) 3:10 4:19 30:13 32:24 39:19 40:11 43:3 45:22 46:17 49:23
--	---	--	--	--

October 25, 2022

[Page 145]

51:5 54:12	read (12)	43:10 44:9,15	record (12)	reflection (3)
57:6,6 60:21	70:15 71:6	44:17 45:6	4:8 24:5 38:16	70:5,20 71:10
69:23 70:9,10	73:7,8 74:23	48:3 52:10,15	38:17 41:12	refresh (3)
71:4 72:12	84:7,10,10	54:8 56:6	41:20,21 50:4	39:11 53:4,5
73:7,8,13,14	86:18 96:11	62:13,13 63:2	70:15 93:3,5	regard (12)
73:18,20	120:24,25	63:3,5,9,19	96:8	15:22 16:7
77:10 80:17	reading (2)	63:21 64:5	records (2)	17:10 22:9,20
80:19 81:8,9	72:5 78:14	65:13 69:3	22:20,24	22:24 23:18
81:16 82:7,12	reads (1)	89:25 94:23	recruiter (1)	38:18 41:18
82:13,19 83:4	72:23	98:12 110:2,7	10:15	51:8 63:20
86:18,19	ready (1)	123:9,10	rectified (1)	122:12
88:17 90:9,15	99:16	receive (3)	121:9	regarding (1)
90:19 95:20	realizes (1)	36:13 68:7	rectify (1)	37:6
101:17 106:4	57:10	82:7	99:2	regardless (3)
106:11,16	really (5)	received (7)	redefine (1)	86:5,14 96:22
111:10 114:7	17:9 28:16	8:19 32:20	30:13	regularity (1)
117:9 120:25	30:19 41:23	37:6,17 78:20	reduce (3)	31:23
questions (5)	115:24	79:24 82:4	19:15,25 21:11	regularly (1)
4:17 26:15	reason (14)	recess (1)	reduced (1)	83:22
73:5,11 125:5	4:18 5:8 39:15	103:20	19:21	rein (1)
quite (4)	55:11 60:10	reclassified (1)	reducing (1)	96:21
16:4,21 21:19	62:17 89:22	92:24	20:16	related (6)
32:8	99:20,23	recognize (8)	reduction (11)	16:14 70:7,22
	100:13	18:23 24:10,25	20:20,23,24	71:22 123:22
R	102:12 104:6	41:8 58:10	21:16 22:3,10	127:14
R (1)	123:16 128:7	64:20,21,23	22:11,15	relations (2)
2:2	reasons (5)	recollection (...)	27:11 29:9	9:22 93:16
race (1)	19:8 23:5	20:17 32:12,16	32:15	relationship ...
120:18	55:15 56:10	33:14 39:11	reductions (1)	89:20 99:11,19
raised (2)	104:8	45:12 51:25	39:21	99:25 100:2
43:17 44:10	reassigned (3)	53:5,6 54:3	redundant (2)	100:10,14
Randall (10)	31:15 93:7,8	54:18 68:3	33:20 34:11	101:10,11,18
20:3 21:13,16	recall (57)	94:10 103:11	reevaluation...	101:24 102:3
31:6,11 32:17	5:5 8:14 11:10	103:18	58:5	102:4,8 115:6
33:25 36:19	17:9,14 21:9	recommenda...	refer (1)	115:10
66:13 67:13	22:7,19 25:12	32:22 119:13	74:9	relationships...
range (1)	25:19 26:12	119:15	reference (1)	93:17 115:8
58:25	27:21 29:14	recommenda...	52:19	release (4)
rarely (1)	30:4,7 31:9	32:21 72:20	referred (1)	25:5,14 26:2
69:9	32:5,19 34:7	124:5	83:25	116:7
rated (1)	35:13,23	recommende...	referring (2)	released (2)
81:7	36:11,21 37:9	23:7 30:18,25	26:22 121:17	25:23 26:4
rationale (2)	37:16 38:20	31:8,11 32:13	reflecting (1)	relevance (1)
30:21 101:22	39:9,14 40:23	33:2,3	41:14	41:16

October 25, 2022

[Page 146]

relevant (3) 118:13,18,21	127:4	resources (19) 6:10 8:2,4,9,25	85:14,19 86:7	116:21,24
remember (18) 9:13 17:4,6	reporting (4) 80:3 114:9,11	9:5,6,8,15	retaliated (1) 120:4	118:5
20:25 22:12	115:9	11:24 17:17	retaliation (1) 120:24	roles (4) 10:13 21:24
27:24 28:18	reports (4) 49:5 52:2,4	51:11 62:5	revenue (1) 20:23	48:14 106:17
31:5 36:17	114:21	89:14,16	review (14) 23:8 26:14	room (1) 20:19
41:15 43:13	represent (2) 4:15 18:17	99:17 100:18	31:13 33:3,5	rough (4) 7:18 14:6
43:21 44:3	representati... 119:6	104:12	34:19 39:13	47:21 53:24
50:14 88:7	reps (1) 119:12	116:12	51:16,17	Roughly (2) 7:9,13
112:20,23	request (5) 19:14 66:8,10	respectfully (...) 121:8	57:12 69:8,10	Roy (4) 31:6,11 33:25
116:19	68:7,18	respective (2) 3:4 20:19	77:11 78:20	67:13
remembered... 32:7	requested (2) 67:7 68:8	responded (1) 18:9	reviewed (14) 23:15 30:17,19	rules (2) 96:23,25
reminders (1) 54:25	requirement... 78:10,24 79:10	responsibiliti... 25:13,20 26:8	37:3 53:11,13	run (1) 12:13
repeat (4) 4:21 17:13	requisition (7) 67:7,9 68:5,8	31:14 69:17	54:2 69:13	running (1) 12:8
44:20 81:8	requisitions (...) 67:25 69:8	70:18 71:11	76:12,15 77:7	
repeated (2) 81:9 86:19	75:25	71:24 72:6,14	80:25 86:9	
rephrase (1) 4:21	research (2) 91:11 110:17	73:2 74:3	128:3	
replacing (1) 68:20	researched (1) 97:22	76:20 84:17	right (5) 24:9 67:2	<hr/> S <hr/>
replicated (1) 94:6	reserve (2) 41:17 50:12	86:4,25 93:11	81:20 88:20	S (3) 2:2 20:20
report (9) 11:23 42:11	reserved (1) 3:10	121:21,25	115:20	126:1
100:6 103:17	resign (1) 11:4	122:4	rights (2) 41:17 50:12	Sajous (1) 43:25
103:21,23	resigned (2) 10:23 11:2	responsibilit... 105:12 112:4	Road (2) 1:10 4:11	salaries (1) 63:18
110:19	resolution (1) 122:9	120:8	role (37) 14:9,13 26:16	salary (1) 51:17
113:13	resolved (1) 122:10	responsible (...) 6:13 9:20,24	30:11 55:17	sales (10) 19:16 29:24
115:21	resource (2) 5:17 74:25	11:13 14:14	55:20,21,22	30:2 91:9,14
reported (14) 10:7,10 11:14		14:21 15:6,11	56:3,5,10	112:24 119:5
11:17,21,25		15:16 17:17	69:25 70:3	119:5,11,16
12:3,6 42:15		17:20 29:25	87:3,7,13	satisfactorily... 78:24
42:18 99:10		48:2 51:18	90:18 93:15	save (1) 65:22
102:7 111:3		63:6 72:16,17	93:23,23 94:3	saved (1) 30:6
113:16		86:16 98:13	94:8,11,24	savings (1)
reporter (6) 1:22 4:4 73:9		105:7,10	95:11,15	
81:10 86:20		108:5 109:17	97:16 98:10	
		113:23	98:21,22 99:3	
		result (3) 22:14 30:5	105:25 106:2	
		33:8	106:18	
		results (3)		

October 25, 2022

[Page 147]

19:18 saw (3) 109:12 114:25 115:4 saying (2) 61:23,25 says (17) 26:22,24 53:8 60:17 65:10 65:18 67:6 71:13,21,23 74:17 85:19 87:23 95:25 107:19 124:9 128:3 sayyes (1) 124:3 scanned (1) 62:11 scheduling (1) 84:14 Scott (5) 40:19,21 42:10 44:7 45:21 scratch (1) 65:23 sealing (1) 3:5 second (2) 65:9 102:12 section (2) 70:13 78:9 see (27) 18:21 25:7 26:21 28:13 41:16 43:23 49:11 52:3,25 57:18 59:20 60:15 61:4,10 70:2,13 74:6 76:2,4 83:7 83:15 85:15 97:8 109:3,6 109:9 113:18	seeing (1) 115:16 seen (4) 37:20 77:18 116:2 120:18 select (1) 38:25 selected (18) 27:4,7,10 28:2 28:5,10,15 32:18 34:14 36:20 37:19 38:13,22,22 39:17 48:8 65:24 76:21 selecting (4) 37:7 39:8 50:24 63:25 selection (5) 30:8,11,15 36:23 37:10 selling (1) 112:14 senior (1) 5:16 sense (1) 90:14 sent (2) 37:25 105:21 separation (2) 21:12 28:2 September (2) 5:23,24 series (1) 75:3 service (1) 15:25 set (5) 93:15,18,18,20 127:18 sets (1) 102:20 seven (1) 81:5	severance (5) 23:24 25:5,14 26:3 126:8 severe (1) 55:7 sex (1) 45:4 SGW (1) 83:25 SGWS (21) 52:24,25 53:3 58:16 59:8,10 59:20,23 60:14 61:3 65:8 69:11 70:12 74:6,23 78:8 79:18 85:17 120:23 121:15 124:8 Shaneka (1) 17:25 share (3) 59:6 77:13,14 shared (1) 24:11 sheet (3) 49:24 126:10 128:1 shift (3) 100:8,8,9 ship (1) 122:10 shop (2) 100:17 102:7 short (2) 74:24 103:19 Shorthand (1) 127:4 show (7) 18:15 26:13 38:13 41:6 52:23 64:18 101:20 showed (3)	77:23,24 115:17 showing (1) 37:18 shown (3) 24:3 41:24 108:11 sick (1) 94:13 side (5) 26:23 91:9,13 91:14,15 sign (2) 62:6 116:9 signature (4) 25:10 61:13 62:18 128:21 signatures (1) 62:9 signed (8) 3:15,17 62:11 63:18 116:6,7 116:7,8 significant (1) 55:23 similar (1) 43:25 single (1) 52:17 sir (1) 61:12 sit (4) 47:11 97:12 111:15 114:8 site (1) 67:10 situation (1) 99:2 situations (1) 17:15 six (4) 14:24 56:5 78:14 80:2 Sixth (1)	2:9 skill (5) 93:15,18,18,19 102:20 skills (6) 70:18 71:24 83:22,23 85:14 104:12 skip (1) 59:21 SMITH (1) 2:8 smooth (1) 75:6 snarky (2) 39:12 112:11 Sodexo (3) 5:14,22 25:3 software (5) 75:2 86:17,24 87:12 95:7 solutions (3) 74:18,22 95:12 solving (1) 104:15 somebody (12) 54:25 70:2 93:16,17 94:4 94:15 99:15 99:16 101:3 102:19 107:20 115:5 sorry (1) 25:3 sound (3) 39:12 90:5 112:11 sounds (1) 83:11 source (1) 52:19 south (1) 91:13 Southern (56)
---	--	---	--	---

October 25, 2022

[Page 148]

1:7,19 4:16 6:2,4 7:23 13:15,18,19 13:20,24,25 14:3 15:3,8 16:24 17:2,12 17:20 19:3,9 19:13 23:13 25:4 35:7 38:18 40:22 42:8 46:25 48:11,22 51:7 54:13 56:12 57:14,20 59:19 60:11 75:2 76:16 90:16,21,25 92:9 105:7 111:7 113:20 114:25 115:2 116:3,13,15 117:19 118:10 120:18 124:4 Southern's (3) 17:18,21 39:16 space (1) 110:4 speak (1) 68:17 specific (15) 10:13 15:22 22:12,19 54:5 54:20 64:22 67:15 91:3 98:21,22 107:16,18 110:7 119:9 specifically (...) 9:18 37:5 51:2 51:14 63:19 63:21 64:7,15 69:4 83:14 87:13	specifics (1) 111:13 Spirits (16) 1:7,19 4:16 6:2 6:4 13:15,19 13:20,24,25 14:4 15:8 19:3 42:8 48:22 116:3 spoke (1) 36:12 spreadsheet ... 33:15 spreadsheets... 23:3 37:22 staff (7) 75:8,13,14,16 84:14 102:14 102:17 staffing (5) 89:18 95:8,9,9 99:14 stamp (2) 24:18 52:24 stamped (3) 18:20,21 50:6 stamps (2) 24:8 41:13 stand (1) 32:9 standard (2) 25:4 105:22 standing (1) 78:16 standpoint (2) 12:11 19:17 start (1) 5:21 started (3) 14:8 53:14 80:22 starts (1) 43:20 startup (1)	75:6 state (15) 1:23 4:5,8 6:14 8:7 9:16 11:12 12:10 12:18 20:10 27:19 67:24 87:11,12 127:5 statement (3) 20:21 52:21 126:11 States (2) 1:2 42:6 status (1) 52:3 stay (4) 22:22 74:18,20 115:8 stenographic... 127:13 stenographic... 127:11 Stenotype (2) 1:22 4:4 Steven (2) 2:6 4:14 stewards (2) 100:18 102:7 STIPULAT... 3:2,8,13 STIPULATI... 3:1 Street (1) 2:5 strong (1) 95:7 Suarez (41) 1:4 4:15 19:6,9 19:13 22:16 25:9,18 26:11 28:5,13 30:12 32:18 35:16 35:21 38:13	42:15,18 44:13,16 45:15,18 56:17 58:6,12 58:19 60:8,14 62:21,24 63:6 63:20,22,25 77:6 80:14 91:16,25 114:11 115:21,22 Suarez' (3) 21:11 28:19 58:23 subject (1) 118:25 submit (3) 34:18 55:3,6 submitted (3) 23:9 54:11 57:13 subordinates... 124:11 Subscribed (2) 125:11 128:22 substance (1) 43:11 succession (1) 9:21 sued (3) 48:21 120:5,11 suggest (1) 45:3 suit (1) 64:12 sum (1) 43:10 supervise (1) 108:25 supervised (3) 90:3 107:6,9 supervision (1) 105:5 supervisor (5)	88:19 89:3,9 98:12 122:4 supervisors (1) 90:11 supervisory (...) 97:16 104:6,22 115:15 121:21 supply (1) 72:21 support (4) 94:16 102:14 102:17 103:13 supported (1) 12:9 supporting (1) 75:2 supposed (6) 57:4 69:20 71:9 72:21 73:25 98:4 sure (27) 17:18,21 30:23 31:19 33:4,5 34:19 51:19 54:7,10 57:8 68:20 72:19 72:22 77:12 88:16,24 92:17 94:11 95:21 99:12 105:23 106:4 107:10 119:18 121:23 122:9 surprise (3) 56:16 57:7,11 surprised (2) 56:24,25 sworn (10) 3:14,17 4:3 15:21,23 16:4 125:11 127:9
---	---	--	--	--

October 25, 2022

[Page 149]

125:11 127:9	talk (6)	27:25 42:23	72:10 89:2,17	53:14,17 54:2
128:2,22	16:23 35:5,10	43:3 49:5	91:23 94:18	54:20,24 55:4
SWS000102 ...	42:25 90:17	51:14 60:18	99:13 103:16	55:23 56:3,4
18:20	118:21	60:23 83:14	115:7	59:2 60:23
SWS000171 ...	talking (8)	90:20 104:2	think (22)	62:5,8,14
18:21	35:6 83:10	telling (1)	10:16 16:3	68:22 69:14
Syosset (11)	84:23 95:4	96:4	17:15 39:15	80:24 84:7,9
6:21 7:16	111:18,19	tells (1)	47:9 55:11,15	85:7 87:16
12:25 14:23	117:11,12	72:15	60:10 75:11	103:4,19
15:9 47:14,20	talks (3)	temporary (2)	88:13 89:11	113:18 125:6
53:10,22	84:12 85:2	102:24 103:9	96:11,20,24	127:8
56:13 57:14	121:11	ten (7)	98:12 104:11	times (14)
system (19)	target (5)	16:6,11 104:25	104:18 107:2	4:21 15:21
52:13 54:18,22	20:20 22:4,5,6	105:3 117:24	111:15	16:2,3,4,5,6
58:14 62:9,12	61:3	118:2,4	113:19	16:10,11,20
65:2 66:6	task (1)	term (1)	117:22	16:25 17:5
67:16 76:9	58:15	20:21	118:22	65:3 84:18
86:23 93:13	tasks (3)	termination ...	thinking (1)	title (20)
95:7,13	74:2 107:13,15	11:20 27:8,11	118:11	6:9 7:21,25 8:8
107:19,25	Tatiana (16)	30:18,19	third (1)	8:12 9:3,10
108:12,20	40:19,21 42:10	35:22	104:5	10:18 12:14
120:14	43:18,24 44:2	terms (3)	Thorell (1)	13:10 18:5
systemic (3)	44:7,24 45:7	14:21 56:3	35:15	26:24 28:19
52:2 68:25	45:10,21	101:13	thought (2)	46:8 87:2
95:12	103:6,7	testified (6)	111:10 119:25	90:21 98:13
Systemically ...	109:15	4:5,25 15:20	three (3)	112:20,23
65:25	120:11,15	49:13,16	5:20 17:5	113:3
T	team (14)	80:10	116:19	titles (10)
T (3)	26:20 27:23	testify (2)	throw (1)	10:13,17 26:21
4:2,2 126:1	33:5 34:18	5:9 114:8	98:17	28:7,14,17
take (8)	36:2,12 57:8	testimony (13)	tie (1)	29:2 88:7
19:15 21:23	67:19 72:18	15:21,23 82:13	98:19	91:3 111:14
23:19 79:16	74:13 75:19	90:8 93:25	time (51)	Tito's (6)
84:7,9,10	94:15 119:8	95:19 96:7,10	3:11 9:7 10:11	107:20,21,24
124:4	122:22	97:13 127:7	10:24 14:19	108:5,18,20
taken (10)	technicalities...	127:10,11	14:22 16:21	today (11)
1:21 56:8	93:12	128:5	16:23 17:8	4:18 5:2,9
92:23,25 93:9	technologies ...	Thank (2)	19:3 20:7	24:15,24
109:18,20,24	72:19 74:19	50:13 81:13	22:12 28:18	41:19 47:11
127:11 128:4	84:20	theme (1)	42:12,13,16	49:13 50:8
talent (4)	technology (1)	50:8	46:10,24	111:16
9:21,21 10:14	64:11	theory (2)	47:25 49:6	116:20
91:10	tell (12)	76:13 90:19	50:17,22 52:5	today's (1)
	16:10 20:15	things (8)	52:10 53:11	13:18

October 25, 2022

[Page 150]

told (4) 43:7 56:16 66:17 97:25 Tonisha (1) 115:21 Toohig (130) 1:20 2:1 4:1,9 4:13 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1,13 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1	80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1 95:1 96:1 97:1 98:1 99:1 100:1 101:1 102:1 103:1 104:1 105:1 106:1 107:1 108:1 109:1 110:1 111:1 112:1 113:1 114:1 115:1 116:1 117:1 118:1 119:1 120:1 121:1 122:1 123:1 124:1 125:1,9 128:1,2 top (4) 56:14 65:10 70:13 94:18 total (2) 15:2 29:8 track (5) 51:22,23 95:5 98:23 102:21 tracking (3) 65:2 86:23 95:7 tracks (1) 89:8 train (1) 75:4 trained (1) 99:16 trainers (1) 85:3 training (5)	54:21 75:7,13 119:17,18 trainings (1) 119:18 transcript (3) 90:9 127:12 128:3 transition (4) 62:13 75:7 86:3 87:11 translate (2) 74:16 87:14 treated (2) 119:7 121:8 treatment (3) 31:20,22 33:6 trends (3) 72:19 74:19,21 trial (2) 1:18 3:11 trouble (1) 65:22 truck (1) 7:10 trucks (1) 7:9 true (1) 127:12 truthfully (1) 5:9 trying (5) 16:2 17:14 92:14 95:9,23 turn (3) 53:3 58:16 78:8 turnover (1) 48:4 two (7) 7:10 41:23 46:11,18 116:19,25 120:25 twofold (1)	74:12 <hr/> U <hr/> ultimately (1) 51:18 Um (2) 89:7 100:6 un (1) 50:5 undated (1) 50:5 understand (...) 4:19,22 13:17 41:24 72:9 82:20,21 95:22,24 96:2 96:3,5,9 106:11 122:5 understandi... 40:3 42:4 72:13 88:11 93:13 105:24 106:2 121:20 understood (2) 68:20 98:23 union (25) 53:19 89:20 92:16,18 93:16,16 94:12 99:12 99:13,19,25 100:3,5,6,11 100:15,17,18 101:10,19 102:4,5,7 104:14 115:5 United (2) 1:2 42:6 untie (1) 98:19 upstate (6) 12:22 13:2,5,7 14:25 20:13 use (1)	104:11 useful (1) 52:18 utilize (1) 54:22 utilizing (1) 97:23 <hr/> V <hr/> V (1) 43:20 vacancies (2) 102:24 103:9 Vaguely (1) 19:10 valid (4) 56:10 118:7,9 119:25 validity (1) 68:18 value (1) 57:10 Veigh (2) 43:21 45:20 venture (1) 66:12 verbiage (1) 83:10 verbose (1) 34:24 verified (1) 46:9 versus (3) 46:7 93:15 112:14 vice-preside... 8:3 9:4,15 11:11 VIDEOCON... 1:18 views (1) 121:7 violate (1) 118:23
--	---	--	---	--

October 25, 2022

[Page 151]

vodka (1) 108:6	109:22	51:23 55:19	woman (2) 44:4 77:16	17:22
VP (12) 8:4,9 9:8 10:5 13:11 14:9,20 17:16,19 54:14 62:5 116:12	wasn't (6) 61:22,25 79:5 93:8 99:15 101:13	105:25 116:13,14	women (4) 48:21 49:16 50:18 120:4	works (2) 19:9,13
<hr/> W <hr/>	way (15) 36:19,19,22 37:11 40:10 50:21 66:15 67:16 79:4 106:13,21,25 111:17 120:15 127:16	withdrew (1) 43:5	word (3) 51:15,15 92:7	wouldn't (6) 58:7 69:13 106:15 109:16 116:17 123:23
wait (1) 84:11		witness (11) 4:24 41:24 50:11 93:3,4 96:5,15 127:7 127:9,18 128:21	work (43) 14:8 30:21,22 33:22 55:8 57:8 72:17 86:10 88:2,4 88:6,12,16,23 88:24 89:4 92:8 93:14 94:4,16 95:10 97:18 99:4,5 99:8,15 100:19 104:16 107:9 107:10,12 109:15 111:8 111:20,23 112:3,9 113:7 113:21 114:14 115:14 119:11 122:8	wrap (1) 92:14
waived (1) 3:6		WM (1) 75:5		write (3) 54:23 89:20 98:6
Wald (9) 10:7,18 42:22 43:12 44:11 65:16 66:18 66:23 75:23	weekends (1) 95:10	WMI (68) 28:21,23 29:5 62:24 63:7,25 64:8 66:5 71:11,18 72:14,16 73:15,22 74:2 75:9 78:11,18 80:22,25 81:5 81:15 82:4,15 82:25 83:12 85:3,10,24 86:3,3,5,11 86:13,15,17 86:21,24 87:4 87:4,12,19 88:4,8 89:13 90:3,13 92:18 92:22 93:11 93:13 94:20 95:2,13,16 97:17,20 103:2,10 106:3,16 107:7 108:22 109:4 121:21 122:7,13,19		written (3) 36:14 62:18 119:16
wall (2) 83:19,19	WHEREOF ... 127:18			wrong (1) 25:4
want (16) 14:20 34:23 39:12 58:16 66:14 84:8 91:3 96:25 97:7 100:3 112:11 114:2 116:18 118:21 124:20,21	Wilkinson (11) 80:4 84:24 85:2 90:2 103:17,22,24 103:25 111:3 114:10,11			<hr/> X <hr/>
warehouse (...) 6:20 28:21 29:19 43:22 45:2 46:7,12 46:22 47:2,7 47:10,13,19 47:24 48:8,16 48:23 50:16 50:19 66:5 72:17,22 74:18 86:23 89:9 98:12,14 102:19,22	Wine (16) 1:7,19 4:16 6:2 6:4 13:15,19 13:20,24,25 14:3 15:8 19:3 42:8 48:22 116:3			x (3) 1:3,9 126:1
	Wine's (1) 75:2			<hr/> Y <hr/>
	withdraw (3) 42:24 49:22 54:11		worked (10) 6:4,6 7:5,11,16 10:19 15:2 56:21 97:20 100:17	year (8) 7:23,24 8:20 52:14 56:20 61:2 81:18 82:18
	withdrawn (...) 7:6 14:19 17:19 22:9,10 25:21 38:17	WMI-I (1) 75:3	worker's (1) 43:19	yearly (1) 81:6
		WMS (2) 72:7 73:3	workers (1) 46:12	years (8) 5:20 8:10 41:23 56:22 104:21,21,25 105:3
			working (6) 5:18,21 70:19 71:25 95:4,10	York (31) 1:3,8,10,19,23 2:5,10,10 4:5 4:12,17 6:13 6:14,18 8:7 9:17 11:12 12:10,17,18 13:2,19 14:25
			workload (4) 106:10,14,23 107:2	
			workplace (1)	

October 25, 2022

[Page 152]

20:10,13 27:20 42:7 67:24 75:15 75:17 127:6 younger (1) 16:22 Yuni (3) 4:3 127:4,25	5:7 15:21 41:2 41:4,7,13 57:16 126:9 10/25/2022 (1) 128:4 10:20 (1) 1:12 100 (10) 7:13 47:14 48:17,23 49:6 53:24,25 107:19,23 108:17 10013 (1) 2:10 101 (1) 2:9 11 (3) 49:25 50:5 126:10 11566 (1) 4:12 11743 (1) 2:5 11747 (1) 1:10 12 (6) 52:22 53:4 58:4 79:16 124:8 126:11 13 (5) 76:25 77:3,19 120:21 126:12 1459 (1) 4:11 15 (1) 53:8 150 (1) 47:23 18 (1) 126:5 19 (1) 61:21	2 2-19-CV-072... 1:4 2/1/2013 (1) 59:12 2/16 (1) 60:25 2:20 (1) 125:6 20 (9) 58:21 74:6,7 78:21 84:9,10 117:21,22 128:23 200 (3) 1:10 53:24,25 2010 (2) 53:9 58:6 2012 (3) 9:10 19:4 59:15 2013 (2) 59:15,25 2014 (9) 57:18,24 58:12 58:21 59:21 59:25 60:5 77:24 78:21 2015 (8) 14:6 59:5,20 60:5 61:2 79:20,23 81:25 2016 (21) 11:3 59:20 60:13 65:11 69:6 76:4,7,9 77:22 78:5 79:13,20,23 79:24 80:23 81:14,21,25 82:5,8 87:17 2017 (5) 8:23 9:9,11	81:12 82:10 2018 (6) 6:6,8 8:16,18 8:24 61:21 2019 (5) 5:23,25 6:7 7:8 7:12 2022 (3) 1:11 125:12 127:19 22 (1) 57:18 23 (1) 126:7 25 (4) 1:11 5:7 7:9 15:21 2618 (1) 53:3 2639 (1) 59:10 2645 (2) 58:9 59:23 2646 (1) 60:17 2651 (1) 58:16 2665 (6) 59:8,20 60:14 79:18 85:17 85:17 2666 (1) 84:25 2667 (2) 84:12,24 2668 (1) 83:21 2669 (2) 61:3,10 2670 (1) 61:10 27 (1) 65:11	3 3 (4) 5:23,25 6:8 64:19 30 (2) 19:4 61:9 300 (1) 7:18 31 (5) 6:5,7 8:16,18 61:20 3rd (1) 127:19
Z Z (1) 4:2				
0 00001754 (1) 65:19 00007154 (1) 66:21 0000897 (1) 69:12 0000899 (1) 70:12 000897 (1) 74:23 001012 (1) 120:23 001024 (1) 78:8 001059 (1) 121:15 002601 (1) 52:24 00265 (1) 124:8 002668 (1) 83:25 002686 (1) 52:25 00896 (1) 65:8				
1 1,500 (1) 15:5 10 (8)				
				4 4 (1) 83:21 4:27:32 (1) 65:11 41 (1) 126:9 49 (1) 126:10
				5 5 (8) 2:5 76:3,7,9 79:13,24 83:21 87:17 50 (4) 48:5 85:20 86:8,8 52 (1) 126:11 54 (1) 121:15
				6 60 (1) 7:10
				7 7 (4) 25:6 58:19,19 120:23

October 25, 2022

[Page 153]

<p>76 (1) 126:12</p> <hr/> <p>8</p> <hr/> <p>8 (6) 18:13,16 24:17 26:13,22 126:5</p> <p>898 (1) 74:6</p> <hr/> <p>9</p> <hr/> <p>9 (6) 23:22,25 24:4 25:2 26:13 126:7</p>				
---	--	--	--	--